I have consulted with my colleague from New York (Mr. BUCKLEY) and also with the attorney general of the State of New York, who shares my very strong views as to the really unfair position in which we have been put. He wishes me to express from him, as an attorney general, his deep feeling of protest at this retroactive provisions which is unjustifiable—at least to him—and I really feel is unjustifiable on any conceivable ground of orderliness of Government, as to the way in which the Government agencies, including the Supreme Court of the United States, operate.

This is a very bad precedent. I have said myself on many occasions that we are not bound by anything we do as a precedent, unless we want to make it a precedent that will be invoked. We do not want to follow such a precedent. I hope we never have to. It is not one of the most glorious chapters in the history of the Senate of the United States.

I believe I have made that point crystal clear. I question whether any other Senator would make the matter more clear; as, for example, an amendment I would have proposed to change the date from January 1, 1974, back to some other date. But that could not be done unless it were the product of an agreement between the parties, by way of settlement, a settlement which could not be obtained. I thought I had come into agreement with the chairman of the committee, but a settlement not being desired, it seems to me that it would only compromise the principle as laid down by the Court as a matter of juridical principle. I emphasize: not a compromise, but on a straight question of juridical principle, requiring no retroactive provision.

My amendment having failed on a motion to table by a vote of 74 to 10, a margin which I think takes us beyond the feeling of some Senators that the vote may have been the other way had they had an opportunity to test out the situation, it seems to me that one other way that it can be tested is by a motion I am about to make. Then Senators can decide whether it is really unfair without jeopardizing the fundamental basis of the legislation prospectively.

So, Mr. President, I move to recommit the bill to the Committee on Banking, Housing and Urban Affairs. On that question, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TOWER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TOWER. Mr. President, I ask for the yeas and nays on the motion of the Senator from New York.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, I wish to say only one word and then I will be through. If Senators will wait a moment, we will be able to vote.

I just heard a statement that makes me worried. I hope it is very clear that the only thing I am arguing for is the right and the power of the State. The American Express Co. or any other issuer of traveler's checks or money orders does not get anything from this bill in either case. The only matter concerned is what State can escheat the funds, the State of the domicile corporation or the State where the money order or traveler's check is issued.

My basic argument is against the 10-year retroactivity. There is no question about any money going to any corporation, the American Express Corp. or any other corporation.

It is only an issue as to what State gets it.

I wish to make it very clear, since I thought there might have been some question about it.

Mr. President, I am ready to vote on the motion.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New York to recommit. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. CANNON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Kentucky (Mr. HUDDLESTON) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) and the Senator from Georgia (Mr. TALMADGE) are absent on official business.

I also announce that the Senator from Hawaii (Mr. INOUYE) is absent because of a death in the family.

Mr. GRIFFIN. I announce that the Senator from Kansas (Mr. PEARSON) is absent on official business.

I further announce that the Senator from Massachusetts (Mr. BROOKE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senator from Illinois (Mr. PERCY), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that, if present and voting, the Senator from Arizona (Mr. GOLDWATER) would vote "nay."

The result was announced—yeas 8, nays 76, as follows:

[No. 46 Leg.]

YEAS—8

Buckley	Fannin	McClure
Case	Hathaway	Williams
Dole	Javits	

NAYS—76

Abourezk	Bentsen	Chiles
Aiken	Bible	Church
Allen	Biden	Clark
Baker	Brock	Cook
Bartlett	Burdick	Cotton
Beall	Byrd, Harry F., Jr.	Cranston
Bellmon	Byrd, Robert C.	Curtis
Bennett		Domenici
Dominick	Magnuson	Randolph
Eagleton	Mansfield	Ribicoff
Ervin	Mathias	Roth
Fong	McClellan	Schweiker
Griffin	McGee	Scott, Hugh
Gurney	McGovern	Scott, William L.
Hansen	McIntyre	Sparkman
Hart	Metcalf	Stafford
Hartke	Metzenbaum	Stennis
Haskell	Mondale	Stevens
Hatfield	Montoya	Stevenson
Helms	Moss	Symington
Hruska	Muskie	Taft
Hughes	Nelson	Thurmond
Humphrey	Nunn	Tower
Jackson	Pastore	Tunney
Johnston	Pell	Weicker
Kennedy	Proxmire	

NOT VOTING—16

Bayh	Gravel	Pearson
Brooke	Hollings	Percy
Cannon	Huddleston	Talmadge
Eastland	Inouye	Young
Fulbright	Long	
Goldwater	Packwood	

So the motion to recommit was rejected.

The PRESIDING OFFICER. The bill is open to amendment.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the yeas and nays on passage be vacated.

The PRESIDING OFFICER. Is there objection to the request of the Senator from New York? The Chair hears none, and it is so ordered.

Mr. JAVITS. Mr. President, I assured the leadership that we had no desire to drag our feet on this matter. I consider the vote that was just cast as deciding the question, and am ready to vote on the bill.

Mr. TOWER. Third reading, Mr. President.

The PRESIDING OFFICER. The bill is open to further amend. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having read the third time, the question is, Shall it pass (putting the question)?

The bill (S. 2705) was passed as follows:

S. 2705

An act to provide for the disposition of abandoned money orders and traveler's checks

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

FINDINGS

SECTION 1. The Congress finds and declares that—

(1) the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments;

(2) a substantial majority of such purchasers reside in the States where such instruments are purchased;

(3) the States wherein the purchasers of money orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment;

(4) it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the States entitled thereto; and

(5) the cost of maintaining and retrieving addresses of purchasers of money orders and

traveler's checks is an additional burden on interstate commerce since it has been determined that most purchasers reside in the State of purchase of such instruments.

DEFINITIONS

SEC. 2. As used in this Act—

(1) "banking organization" means any bank, trust company, savings bank, safe deposit company, or a private banker engaged in business in the United States;

(2) "business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals; and

(3) "financial organization" means any savings and loan association, building and loan association, credit union, or investment company engaged in business in the United States.

STATE ENTITLED TO ESCHEAT OR TAKE CUSTODY

SEC. 3. Where any sum is payable on a money order, traveler's check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable—

(1) if the books and records of such banking or financial organization or business association show the State in which such money order, traveler's check, or similar written instrument was purchased, that State shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum;

(2) if the books and records of such banking or financial organization or business association do not show the State in which such money order, traveler's check, or similar written instrument was purchased, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, until another State shall demonstrate by written evidence that it is the State of purchase; or

(3) if the books and records of such banking or financial organization or business association show the State in which such money order, traveler's check, or similar written instrument was purchased and the laws of the State of purchase do not provide for the escheat or custodial taking of the sum payable on such instrument, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, subject to the right of the State of purchase to recover such sum from the State of principal place of business if and when the law of the State of purchase makes provision for escheat or custodial taking of such sum.

APPLICABILITY

SEC. 4. This Act shall be applicable to sums payable on money orders, traveler's checks, and similar written instruments deemed abandoned on or after February 1, 1965, except to the extent that such sums have been paid over to a State prior to January 1, 1974.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SPARKMAN. I move to lay that motion on the table.

The motion to lay on the table as agreed to.

Mr. JAVITS. Mr. President, I ask unanimous consent that the RECORD show that I voted "nay" on passage.

The PRESIDING OFFICER. The RECORD will so show. What is the will of the Senate?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DOMENICI). Without objection, it is so ordered.

FAIR LABOR STANDARDS AMENDMENTS OF 1974

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 666, S. 2747, so that it may become the pending business.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

S. 2747 to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that act, to expand the coverage of the act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Public Welfare, with amendments, on page 1, line 5, after the word "of", strike out "1973" and insert "1974"; in line 6, after the word "this", strike out "title" and insert "Act"; on page 2, line 9, after the word "of", strike out "1973" and insert "1974"; in line 16, after the word "of", strike out "1973" and insert "1974"; in line 21, after the word "of", strike out "1973" and insert "1974"; on page 3, line 8, after the word "of", strike out "1973" and insert "1974"; on page 4, line 13, after the word "of", strike out "1973" and insert "1974"; in line 19, after the word "of", strike out "1973" and insert "1974"; in line 24, after the word "of", strike out "1973" and insert "1974"; on page 5, line 6, after the word "an", strike out "hour", and insert "hour."; at the beginning of line 7, strike out "except that, in the case of an employee whose wage order rate was increased (pursuant to the recommendations of a special industry committee convened under section 8) during the period beginning on July 26, 1973, and ending before the effective date of the Fair Labor Standards Amendments of 1973, the wage order rate applicable to such employee shall be increased only if the amount of the increase during such period was less than the otherwise applicable increase prescribed by clause (i) or (ii) of this subparagraph and only to the extent of the difference between the increase during such period and such otherwise applicable increase."; on page 6, line 20, after the word "of", strike out "1973" and insert "1974"; in line 22, after the word "of", strike out "1973" and insert "1974"; on page 7, line 9, after the word "of", strike out "1973" and insert "1974"; on page 14, line 18, after the word "of", strike out "1973" and insert "1974"; on page 15, at the beginning of line 25, strike out "1973" and insert "1974"; on page 16, line 18, after the word "constitute", strike ""wages"" and insert "'wages""; on page 21, line 2, after the word "of", strike out "1973" and insert "1974"; in line 16, after the word "of", strike out "1973" and insert "1974"; on page 23, line 4, after the word "of", strike out "1973" and insert "1974"; on page 25, line 4, after the word "of", strike out "1973" and insert "1974"; in line 11, after the word "of", where it appears the second time, strike out "1973" and insert "1974"; on page 27, line 9, after "(a)", strike out "Effective January 1, 1974, sections" and insert "Sections"; in line 15, after "(b)", strike out "Effective January 1, 1974, section" and insert "Section"; on page 28, line 8, after "(a)", strike out "Effective January 1, 1974, section" and insert "Section"; in line 13, after "(1)", strike out "Effective January 1, 1974, section " and insert "Section"; on page 30, line 11, after "(1)", strike out "Effective January 1, 1974, section" and insert "Section"; on page 33, line 15, after the word "of", strike out "1973" and insert "1974"; on page 37, line 22, after the word "of", strike out "1973" and insert "1974"; on page 41, line 24, after the word "may", strike out "be" and insert "by"; on page 42, line 18, after "(b)", strike out "Effective January 1, 1974, section" and insert "Section"; on page 43, at the beginning of line 17, strike out "(c)" and insert "(e)"; and on page 44, line 8, after "(a)", strike out "(4)" and insert "(4),"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCES TO ACT

SECTION 1. (a) This Act may be cited as the "Fair Labor Standards Amendments of 1974".

(b) Unless otherwise specified, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the section or other provision amended or repealed is a section or other provision of the Fair Labor Standards Act of 1938 (29 U.S.C. 201–219).

INCREASE IN MINIMUM WAGE RATE FOR EMPLOYEES COVERED BEFORE 1966

SEC. 2. Section 6(a)(1) is amended to read as follows:

"(1) not less than $2 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1974, and not less than $2.20 an hour thereafter, except as otherwise provided in this section;".

INCREASE IN MINIMUM WAGE RATE FOR NONAGRICULTURAL EMPLOYEES COVERED IN 1966 AND 1973

SEC. 3. Section 6(b) is amended (1) by inserting ", title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974" after "1966", and (2) by striking out paragraphs (1) through (5) and inserting in lieu thereof the following:

"(1) not less than $1.80 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1974,

"(2) not less than $2 an hour during the

second year from the effective date of such amendments,

"(3) not less than $2.20 an hour thereafter.".

INCREASE IN MINIMUM WAGE RATE FOR AGRICULTURAL EMPLOYEES

SEC. 4. Section 6(a)(5) is amended to read as follows:

"(5) if such employee is employed in agriculture, not less than—

"(A) $1.60 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1974.

"(B) $1.80 an hour during the second year from the effective date of such amendments,

"(C) $2 an hour during the third year from the effective date of such amendments,

"(D) $2.20 an hour thereafter.".

INCREASE IN MINIMUM WAGE RATES FOR EMPLOYEES IN PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 5. (a) Section 5 is amended by adding at the end thereof the following new subsection:

"(e) The provisions of this section, section 6(c), and section 8 shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands, (2) by an establishment which is a hotel, motel, or restaurant, or (3) by any other retail or service establishment which employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs. The minimum wage rate of such an employee shall be determined under this Act in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this Act. As used in the preceding sentence, the term 'State' does not include a territory or possession of the United States.".

(b) Effective on the date of the enactment of the Fair Labor Standards Amendments of 1974, subsection (c) of section 6 is amended by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

(2) Except as provided in paragraphs (4) and (5), in the case of any employee who is covered by such a wage order on the date of enactment of the Fair Labor Standards Amendments of 1974 and to whom the rate or rates prescribed by subsection (a) or (b) would otherwise apply, the wage rate applicable to such employee shall be increased as follows:

"(A) Effective on the effective date of the Fair Labor Standards Amendments of 1974, the wage order rate applicable to such employee on the day before such date shall—

"(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

"(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour.

"(B) Effective on the first day of the second and each subsequent year after such date, the highest wage order rate applicable to such employees on the date before such first day shall—

"(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

"(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour.

In the case of an employee employed in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5, to whom the rate or rates prescribed by subsection (a)(5) would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order or by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the increases prescribed by this paragraph shall be applied to the sum of the wage rate in effect under such wage order and the amount by which the employee's hourly wage rate is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order.

"(3) In the case of any employee employed in Puerto Rico or the Virgin Islands to whom this section is made applicable by the amendments made to this Act by the Fair Labor Standards Amendments of 1974, the Secretary shall, as soon as practicable after the date of enactment of the Fair Labor Standards Amendments of 1974, appoint a special industry committee in accordance with section 5 to recommend the highest minimum wage rate or rates, which shall be not less than 60 per centum of the otherwise applicable minimum wage rate in effect under subsection (b) or $1.00 and hour, whichever is greater, to be applicable to such employee in lieu of the rate or rates prescribed by subsection (b). The rate recommended by the special industry committee shall (A) be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation, but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1974, and (B) except in the case of employees of the government of Puerto Rico or any political subdivision thereof, be increased in accordance with, paragraph (2)(B).

"(4)(A) Notwithstanding paragraph (2)(A) or (3), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(A) or (3) of this subsection, shall, on the effective date of the wage increase under paragraph (2)(A) or of the wage rate recommended under paragraph (3), as the case may be, be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) or $1.00, whichever is higher.

"(B) Notwithstanding paragraph (2)(B), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(B), shall, on and after the effective date of the first wage increase under paragraph (2)(B), be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) or $1.00, whichever is higher.

"(5) If the wage rate of an employee is to be increased under this subsection to a wage rate which equals or is greater than the wage rate under subsection (a) or (b) which, but for paragraph (1) of this subsection, would be applicable to such employee, this subsection shall be inapplicable to such employee and the applicable rate under such subsection shall apply to such employee.

"(6) Each minimum wage rate prescribed by or under paragraph (2) or (3) shall be in effect unless such minimum wage rate has been superseded by a wage order (issued by the Secretary pursuant to the recommendation of a special industry committee convened under section 8) fixing a higher minimum wage rate."

(c)(1) The last sentence of section 8(b) is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following: "except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 6(a) or 6(b), which would be applicable but for section 6(c), unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage."

(2) The third sentence of section 10(a) is amended by inserting after "modify" the following: "(including provision for the payment of an appropriate minimum wage rate)".

(d) Section 8 is amended (1) by striking out "the minimum wage prescribed in paragraph (1) of section 6(a) in each such industry" in the first sentence of subsection (a) and inserting in lieu thereof "the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 6(a) but for section 6(c)", (2) by striking out "the minimum wage rate prescribed in paragraph (1) of section 6(a)" in the last sentence of subsection (a) and inserting in lieu thereof "the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 6(a)", and (3) by striking out "prescribed in paragraph (1) of section 6(a)" in subsection (c) and inserting in lieu thereof "in effect under paragraph (1) or (5) of section 6(a) (as the case may be)".

FEDERAL AND STATE EMPLOYEES

SEC. 6. (a) (1) Section 3 (d) is amended to read as follows:

"(d) 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

(2) Section 3(e) is amended to read as follows:

"(e)(1) Except as provided in paragraphs (2) and (3), the term 'employee' means any individual employed by an employer.

"(2) In the case of an individual employed by a public agency, such term means—

"(A) any individual employed by the Government of the United States—

"(i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),

"(ii) in any executive agency (as defined in section 105 of such title),

"(iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,

"(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

"(v) in the Library of Congress;

"(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

'(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

"(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

"(ii) who—

"(I) holds a public elective office of that State, political subdivision, or agency,

"(II) is selected by the holder or such an office to be a member of his personal staff,

"(III) is appointed by such an officeholder to serve on a policymaking level, or

"(IV) who is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office.

"(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.".

(3) Section 3(h) is amended to read as follows:

"(h) 'Industry' means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.".

(4) Section 3(r) is amended by inserting "or" at the end of paragraph (2) and by

inserting after that paragraph the following new paragraph:

"(3) in connection with the activities of a public agency.".

(5) Section 3(s) is amended—

(A) by striking out in the matter preceding paragraph (1) "including employees handling, selling, or otherwise working on goods' and inserting in lieu thereof "or employees handling, selling, or otherwise working on goods or materials".

(B) by striking out "or" at the end of paragraph (3),

(C) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; or",

(D) by adding after paragraph (4) the following new paragraph:

"(5) is an activity of a public agency.", and

(E) by adding after the last sentence the following new sentence: "The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.".

(6) Section 3 is amended by adding after subsection (w) the following:

"(x) 'Public agency' means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency.".

(b) Section 4 is amended by adding at the end thereof the following new subsection:

"(f) The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to any individual employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this Act with respect to such individuals. Notwithstanding any other provision of this Act, or any other law, the Civil Service Commission is authorized to administer the provisions of this Act with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, or Postal Rate Commission). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 16(b) of this Act.".

(c) Section 7 is amended by adding at the end thereof the following new subsection:

"(k) No public agency shall be deemed to have violated subsection (a) with regard to any employee engaged in fire protection or law enforcement activities (including security personnel in correctional institutions) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of twenty-eight consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed for his employment in excess of—

"(1) one hundred and ninety-two hours in each such twenty-eight day period during the first year from the effective date of the Fair Labor Standards Amendments of 1974;

"(2) one hundred and eighty-four hours in each such twenty-eight day period during the second year from such date;

"(3) one hundred and seventy-six hours in each such twenty-eight day period during the third year from such date;

"(4) one hundred and sixty-eight hours in each such twenty-eight day period during the fourth year from such date; and

"(5) one hundred and sixty hours in each such twenty-eight day period thereafter.".

(d)(1) The second sentence of section 16(b) is amended to read as follows: "Action to recover such liability may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.".

(2)(A) Section 6 of the Portal-to-Portal Pay Act of 1947 is amended by striking out the period at the end of paragraph (c) and by inserting in lieu thereof a semicolon and by adding after such paragraph the following:

"(d) with respect to any cause of action brought under section 16(b) of the Fair Labor Standards Act of 1938 against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.".

(B) Section 11 of such Act is amended by striking out "(b)" after "section 16".

DOMESTIC SERVICE WORKERS

SEC. 7. (a) Section 2(a) is amended by inserting at the end the following new sentence "The Congress further finds that the employment of persons in domestic service in households affects commerce."

(b)(1) Section 6 is amended by adding after subsection (e) the following new subsection:

"(f) Any employee who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under section 6(b) unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act constitute 'wages', for purposes of title II of such Act."

(2) Section 7 is amended by adding after the subsection added by section 6(c) of this Act the following new subsection:

"(l) Subsection (a)(1) shall apply with respect to any employee who in any workweek is employed in domestic service in a household unless such employee's compensation for such work would not because of section 209(g) of the Social Security Act constitute 'wages', for purposes of title II of such Act."

(3) Section 13(a) is amended by adding at the end the following new paragraph:

"(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary)."

(4) Section 13(b) is amended by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or " and by adding after that paragraph the following new paragraph:

"(20) any employee who in domestic service in a household and who resides in such household; or".

RETAIL AND SERVICE ESTABLISHMENTS

SEC. 8. (a) Effective July 1, 1974, section 13(a)(2) (relating to employees of retail and service establishments) is amended by striking out "$250,000" and inserting in lieu thereof "$225,000".

(b) Effective July 1, 1975, such section is amended by striking out "$225,000" and inserting in lieu thereof "$200,000".

(c) Effective July 1, 1976, such section is amended by striking out "or such establishment has an annual dollar volume of sales which is less than $200,000 (exclusive of excise taxes at the retail level which are separately stated)".

TOBACCO EMPLOYEES

SEC. 9. (a) Section 7 is amended by adding after the subsection added by section 7(b)(2) of this Act the following:

"(m) For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

"(1) is employed by such employer—

"(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

"(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

"(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

"(2) receives for—

"(A) such employment by such employer which is in excess of ten hours in any workday, and

"(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.".

(b)(1) Section 13(a)(14) is repealed.

(2) Section 13(b) is amended by adding after the paragraph added by section 7(b)(4) of this Act the following new paragraph:

"(21) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco; or".

TELEGRAPH AGENCY EMPLOYEES

SEC. 10. (a) Section 13(a)(11) (relating to telegraph agency employees) is repealed.

(b)(1) Section 13(b) is amended by adding after the paragraph added by section 9(b)(2) of this Act the following new paragraph:

"(22) any employee or proprietor in a retail or service establishment, which qualifies as an exempt retail or service establishment under paragraph (2) of subsection (a) with respect to whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month and receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, section 13(b)(22) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(3) Effective two years after such date, section 13(b)(22) is repealed.

SEAFOOD CANNING AND PROCESSING EMPLOYEES

SEC. 11. (a) Section 13(b)(4) (relating to fish and seafood processing employees) is amended by inserting "who is" after "employee", and by inserting before the semicolon the following: ", and who receives compensation for employment in excess of forty-eight hours in any work-week at a rate not less than one and one-half times the regular rate at which he is employed".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, section 13(b)(4) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours."

(c) Effective two years after such date, section 13(b)(4) is repealed.

NURSING HOME EMPLOYEES

SEC. 12. (a) Section 13(b)(8) (insofar as it relates to nursing home employees) is amended by striking out "any employee who (A) is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises" and the remainder of that paragraph.

(b) Section 7(j) is amended by inserting after "a hospital" the following: "or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises".

HOTEL, MOTEL, AND RESTAURANT EMPLOYEES AND TIPPED EMPLOYEES

SEC. 13. (a) Section 13(b)(8) (insofar as it relates to hotel, motel, and restaurant employees) (as amended by section 12) is amended (1) by striking out "any employee" and inserting in lieu thereof "(A) any employee (other than an employee of a hotel or motel who is employed to perform maid or custodial services) who is," (2) by inserting before the semicolon the following: "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed", and (3) by adding after such section the following:

"(B) any employee who is employed by a hotel or motel to perform maid or custodial services and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, subparagraphs (A) and (B) of section 13(b)(8) are each amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-six hours".

(c) Effective two years after such date, subparagraph (B) of section 13(b)(8) is amended by striking out "forty-six hours" and inserting in lieu thereof "forty-four hours".

(d) Effective three years after such date, subparagraph (B) of section 13(b)(8) is repealed and such section is amended by striking out "(A)".

(e) The last sentence of section 3(m) is amended to read as follows: "In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually recived by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this section, and (2) all tips received by such employee have been retained by the employee, except that nothing herein shall prohibit the pooling of tips among employees who customarily and regularly receive tips.".

SALESMEN, PARTSMEN, AND MECHANICS

SEC. 14. Section 13(b)(10) (relating to salesmen, partsmen, and mechanics) is amended to read as follows:

"(10)(A) any salesman primarily engaged in selling automobiles, trailers, trucks, farm implements, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such boats or vehicles to ultimate purchasers; or

"(B) any partsman primarily engaged in selling parts for automobiles, trucks, or farm implements and any mechanic primarily engaged in servicing such vehicles, if they are employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; or".

FOOD SERVICE ESTABLISHMENT EMPLOYEES

SEC. 15. (a) Section 13(b)(18) (relating to food service and catering employees) is amended by inserting immediately before the semicolon the following: "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed."

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, such section is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(c) Effective two years after such date, such section is repealed.

BOWLING EMPLOYEES

SEC. 16. (a) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, section 13(b)(19) (relating to employees of bowling establishments) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(b) Effective two years after such date, such section is repealed.

SUBSTITUTE PARENTS FOR INSTITUTIONALIZED CHILDREN

SEC. 17. Section 13(b) is amended by inserting after the paragraph added by section 10(b)(1) of this Act the following new paragraph:

"(23) any employee who is employed with his spouse by a nonprofit education institution to serve as the parents of children—

"(A) who are orphans or one of whose natural parents is deceased, or

"(B) who are enrolled in such institution and reside in residential facilities of the institution, while such children are in residence at such institution,

if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or".

EMPLOYEES OF CONGLOMERATES

SEC. 18. Section 13 is amended by adding at the end thereof the following:

"(g) The exemption from section 6 provided by paragraphs (2) and (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support, the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated), except that the exemption from section 6 provided by subparagraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) if it were in an enterprise described in section 3(s).".

SEASONAL INDUSTRY EMPLOYEES

SEC. 19. (a) Sections 7(c) and 7(d) are each amended—

(1) by striking out "ten workweeks" and inserting in lieu thereof "seven workweeks", and

(2) by striking out "fourteen workweeks" and inserting in lieu thereof "ten work weeks".

(b) Section 7(c) is amended by striking out "fifty hours" and inserting in lieu thereof "forty-eight hours".

(c) Effective January 1, 1975, sections 7(c) and 7(d) are each amended—

(1) by striking out "seven workweeks" and inserting in lieu thereof "five workweeks", and

(2) by striking out "ten workweeks" and inserting in lieu thereof "seven workweeks".

(d) Effective January 1, 1976, sections 7(c) and 7(d) are each amended—

(1) by striking out "five workweeks" and inserting in lieu thereof "three workweeks", and

(2) by striking out "seven workweeks" and inserting in lieu thereof "five workweeks".

(e) Effective December 31, 1976, sections 7(c) and 7(d) are repealed.

COTTON GINNING AND SUGAR PROCESSING EMPLOYEES

SEC. 20. (a) Section 13(b)(15) is amended to read as follows:

"(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or".

(b)(1) Section 13(b) is amended by adding after paragraph (23) the following new paragraph;

"(24) any employee who is engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities and who receives compensation for employment in excess of—

"(A) seventy-two hours in any workweek for not more than six workweeks in a year.

"(B) sixty-four hours in any workweek for not more than four workweeks in that year,

"(C) fifty-four hours in any workweek for not more than two workweeks in that year, and

"(D) forty-eight hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective January 1, 1975, section 13(b)(24) is amended—

(A) by striking out "seventy-two" and inserting in lieu thereof "sixty-six";

(B) by striking out "sixty-four" and inserting in lieu thereof "sixty";

(C) by striking out "fifty-four" and inserting in lieu thereof "fifty";

(D) by striking out "and" at the end of subparagraph (C); and

(E) by striking out "forty-eight hours in any other workweek in that year" and inserting in lieu thereof the following: "forty-six

hours in any workweek for not more than two workweeks in that year; and

"(E) forty-four hours in any other workweek in that year,".

(f) Effective January 1, 1976, section 13(b)(24) is amended—

(A) by striking out "sixty-six" and inserting in lieu thereof "sixty";

(B) by striking out "sixty" and inserting in lieu thereof "fifty-six";

(C) by striking out "fifty" and inserting in lieu thereof "forty-eight";

(D) by striking out "forty-six" and inserting in lieu thereof "forty-four"; and

(E) by striking out "forty-four" and inserting in lieu thereof "forty".

(c)(1) Section 13(b) is amended by adding after paragraph (24) the following new paragraph:

"(25) any employee who is engaged in the processing of sugar beets, sugar beet molasses, or sugarcane into sugar (other than refined sugar) or syrup and who receives compensation for employment in excess of—

"(A) seventy-two hours in any workweek for not more than six workweeks in a year,

"(B) sixty-four hours in any workweek for not more than four workweeks in that year,

"(C) fifty-four hours in any workweek for not more than two workweeks in that year, and

"(D) forty-eight hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective January 1, 1975, section 13(b)(25) is amended—

(A) by striking out "seventy-two" and inserting in lieu thereof "sixty-six";

(B) by striking out "sixty-four" and inserting in lieu thereof "sixty";

(C) by striking out "fifty-four" and inserting in lieu thereof "fifty";

(D) by striking out "and" at the end of subparagraph (C); and

(E) by striking out "forty-eight hours in any other workweek in that year" and inserting in lieu thereof the following: "forty-six hours in any workweek for not more than two workweeks in that year, and

"(H) forty-four hours in any other workweek in that year,".

(3) Effective January 1, 1976, section 13(b)(25) is amended—

(A) by striking out "sixty-six" and inserting in lieu thereof "sixty";

(B) by striking out "sixty" and inserting in lieu thereof "fifty-six";

(C) by striking out "fifty" and inserting in lieu thereof "forty-eight";

(D) by striking out "forty-six" and inserting in lieu thereof "forty-four"; and

(E) by striking out "forty-four" and inserting in lieu thereof "forty".

LOCAL TRANSIT EMPLOYEES

SEC. 21. (a) Section 7 is amended by adding after the subsection added by section 9(a) of this Act the following new subsection:

"(n) In the case of an employee of an employer engaged in the business of operating a street, suburban, or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit) in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment."

(b)(1) Section 13(b)(7) (relating to employees of street, suburban, or interurban electric railways or local trolley or motorbus carriers) is amended by striking out ", if the rates and services of such railway or carrier are subject to regulation by a State or local agency" and inserting in lieu thereof the following: "(regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(2) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, 1974, such section is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(3) Effective two years after such date, such section is repealed.

COTTON AND SUGAR SERVICES EMPLOYEES

SEC. 22. Section 13 is amended by adding after the subsection added by section 18(a) the following:

"(h) The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

"(1) is employed by such employer—

"(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

"(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

"(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; and

"(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and".

"(2) receiver for—

"(A) such employment by such employer which is in excess of ten hours in any workday, and

"(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 7.".

OTHER EXEMPTIONS

SEC. 23. (a)(1) Section 13(a)(9) (relating to motionpicture theater employees) is repealed

(2) Section 13(b) is amended by adding after paragraph (25) the following new paragraph:

"(26) any employee employed by an establishment which is a motion picture theater;".

(b)(1) Section 13(a)(13) (relating to small logging crews) is repealed.

(2) Section 13(b) is amended by adding after paragraph (26) the following new paragraph:

"(27) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight.".

(c) Section 13(b)(2) (insofar as it relates to pipeline employees) is amended by inserting after "employer" the following: "engaged in the operation of a common carrier by rail and".

EMPLOYMENT OF STUDENTS

SEC. 24. (a) Section 14 is amended by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following:

"SEC. 14. (a) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitation as to time, number, proportion, and length of service as the Secretary shall prescribe.

"(b)(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the otherwise applicable wate rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

"(B) Except as provided in paragraph (4)(B), the proportion of student hours of employment under special certificates issued under subparagraph (A) to the total hours of employment of all employees in any retail or service establishment may not exceed (i) such proportion for the corresponding month of the twelve-month period preceding May 1, 1961, (ii) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered by this Act for the first time on or after the effective date of the Fair Labor Standards Amendments of 1966 or the Fair Labor Standards Amendments of 1974, such proportion for the corresponding month of the twelve-month period immediately prior to the applicable effective date, or (iii) in the case of a retail or service establishment coming into existence after May 1, 1961, or a retail or service establishment for which records of student hours worked are not available, a proportion of student hours of employment to total hours of employment of all employees based on the practice during the twelve-month period preceding May 1, 1961, in similar establishments of the same employer in the same general metropolitan area in which the new establishment is located, similar establishments of the same employer in the same or nearby counties if the new establishment is not in a metropolitan area, or other establishments of the same general character operating in the community or the nearest comparable community. For the purposes of the preceding sentence, the term 'student hours of employment' means student hours worked at less than $1.00 an hour, except that such term shall include, in States whose minimum wages were at or above $1.00 an hour in the base year, hours worked by students at the State minimum wage in the base year.

"(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or

order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 6(a)(5) or not less than $1.30 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at the wage rate not less than 85 per centum of the wage rate in effect under section 6(c)(3)), of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

"(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, which ever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

"(4)(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

"(B) If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed four—

"(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

"(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

"(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate."

(b) Section 14 is further amended by redesignating subsection (d) as subsection (c) and by adding at the end the following new subsection:

"(d) The Secretary may by regulation or order provide that sections 6 and 7 shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws."

(c) Section 4(d) is amended by adding at the end thereof the following new sentence: "Such report shall also include a summary of the special certificates issued under section 14(b)."

CHILD LABOR

SEC. 25. (a) Section 12 (relating to child labor) is amended by adding at the end thereof the following new subsection:

"(d) In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age."

(b) *Section* 13(c) (1) (relating to child labor in agriculture) is amended to read as follows:

"(c) (1) Except as provided in paragraph (2), the provisions of section 12 relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

"(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of section 13(a)(6)(A) required to be paid at the wage rate prescribed by section 6(a)(5),

"(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

"(C) is fourteen years of age or older.".

(c) Section 16 is amended by adding at the end thereof the following new subsection:

"(e) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, may be—

"(1) deducted from any sums owing by the United States to the person charged;

"(2) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

"(3) ordered by the court in an action brought under section 15(a)(4), to be paid to the Secretary.

Any administrative determination by the Secretary of the amount of such penalty shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary. Sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provisions of section 2 of an Act entitled 'An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes' (29 U.S.C. 9a)."

SUITS BY SECRETARY FOR BACK WAGES

SEC. 26. The first three sentences of section 16(c) are amended to read as follows: "The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) to bring an action by or on behalf of any employee and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 6 and 7 or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provision of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary."

ECONOMIC EFFECTS STUDIED

SEC. 27. Section 4(d) is amended by—

(1) inserting "(1)" immediately after "(d)",

(2) inserting in the second sentence after the term "minimum wages" the following: "and overtime coverage"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 13 of this Act, and the extent to which such exemptions apply to employees of establishment described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.".

AGE DISCRIMINATION

SEC. 28. (1) the first sentence of section 11(b) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630(b)) is amended by stiking out "twenty-five" and inserting in lieu thereof "twenty".

Nondiscrimination on Account of Age in Government Employment

(2) The second sentence of section 11(b) is amended to read as follows: "The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United States, or

a corporation wholly owned by the Government of the United States."

(3) Section 11(c) of such Act is amended by striking out ", or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance".

(4) Section 11(f) of such Act is amended to read as follows:

"(f) The term 'employee' means an individual employed by any employer except that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy-making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision."

(5) Section 16 of such Act is amended by striking the figure "$3,000,000", and inserting in lieu thereof "$5,000,000".

(b) (1) The Age Discrimination in Employment Act of 1967 is amended by redesignating sections 15 and 16, and all references thereto, as section 16 and section 17, respectively.

(2) The Age Discrimination in Employment Act of 1967 is further amended by adding immediately after section 14 the following new section:

"NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 15. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units in the government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on age.

"(b) Except as otherwise provided in this subsection, the Civil Service Commission is authorized to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Civil Service Commission shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

"(1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency or unit;

"(2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and

"(3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Civil Service Commission which shall include a porvision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

"(c) Any persons aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act.

"(d) When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice

"(e) Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law."

EFFECTIVE DATE

SEC. 29. (a) Except as otherwise specifically provided, the amendments made by this Act shall take effect on the first day of the first full month which begins after the date of the enactment of this Act.

(b) Notwithstanding subsection (a), on and after the date of the enactment of this Act the Secretary of Labor is authorized to prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask uanimous consent that, beginning at the conclusion of morning business on Tuesday, March 5, 1974, there be a time limitation of 2 hours on each amendment on S. 2747, the pending business, to be equally divided between the sponsor of the amendment and the manager of the bill or whomever he may designate; that there be 2 hours on the bill to be equally divided between the majority and minority leaders or whomever they may designate.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Montana?

Mr. JAVITS. Mr. President, what about the rule of germaneness on this matter?

Mr. MANSFIELD. The usual rule will apply.

Mr. JAVITS. Mr. President, if the Senator will withhold that for a moment——

Mr. MANSFIELD. Mr. President, I would include the Buckley amendment in the unanimous consent request.

The PRESIDING OFFICER. Is there objection that the agreement be in the usual form as requested?

Mr. GRIFFIN. With the understanding that the Buckley amendment would be germane.

The PRESIDING OFFICER. That is understood.

Mr. JAVITS. Mr. President, what about amendments to amendments? We always forget about that. Could wehave a half-hour or 1 hour——

Mr. MANSFIELD. I would say one-half hour to be equally divided on the usual basis.

Mr. JAVITS. On amendments to amendments, and motions, and so forth?

Mr. MANSFIELD. That is right.

The PRESIDING OFFICER. Are these requests to be made part of the unanimous consent agreement?

Mr. MANSFIELD. Yes, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the unanimous consent agreement is as follows:

Ordered, That, during the consideration of S. 2747, a bill to amend the Fair Labor Standards Act of 1938, debate on any amendment shall be limited to 2 hours, to be equally divided and controlled by the mover of such amendment and the manager of the bill or his designee, and that debate on any amendment to an amendment, debatable motion or appeal shall be limited to ½ hour, to be equally divided and controlled by the mover of such and the manager of the bill or his designee: Provided, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: Provided further, That no amendment [except one amendment to be offered by the Senator from New York (Mr. Buckley), and amendments to be offered by the Senator from Ohio (Mr. Taft)] that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of the final passage of the said bill debate shall be limited to 2 hours, to be equally divided and controlled, respectively, by the majority and minority leaders or their designees: Provided, That the said leaders, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

Mr. MANSFIELD. Mr. President, if the distinguished Senator from New Jersey (Mr. WILLIAMS) will yield to me, I should like to suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I ask unanimous consent that during the consideration of the minimum wage bill, Dave Dunn and Gene Mittelman may be permitted the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that amendments to be offered by the Senator from Ohio (Mr. TAFT) to S. 2747 shall be considered as germane under the previously agreed to unanimous-consent agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that during the deliberations on S. 2747 and rollcall votes thereon, the following staff members be permitted the privileges of the floor: Gerald Feder, Donald Elisburg, Robert Nagle, Eugene Mittelman, and Roger King.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, today we are beginning the debate for the third time in as many years on a bill to raise the minimum wage.

Two years ago the bill at issue would have raised the minimum wage to $2 an hour, on the effective date for most covered workers.

Last year, the raise would have been the same.

Two years ago the Senate passed that bill—last year the Congress passed the bill only to have the President veto the measure.

If either of those bills had become law, the minimum wage worker who works full-time, year round, would look forward to being paid almost $4,600 a year, which is nearly at the poverty line.

Instead, these bills did not become law, and the minimum wage is still $1.60 an hour and, after working full-time for a whole year, the minimum wage worker's annual earnings are still $1,300 below the poverty line.

The bill which the Senate begins to consider today is virtually identical to last year's bill and similar to the 1972 bill.

The committee has not provided for additional increases in the minimum wage over the last 2 years even though galloping inflation and the inconscionable delay have fully justified such increases.

The committee decided to stay with last year's rate schedule in the hope that enactment would finally be forthcoming if the annual wage bill increase required by the bill was less than the previous measures.

What does this mean in dollars—in dollar terms, this bill increases the wage bill on the effective date by $1.5 billion, while last year's bill would have increased the wage bill by $1.8 billion, and the 1972 wage bill by $2.8 billion.

The committee bill still has a $2 rate on the effective date.

The question again, is how long do we continue to delay this increase for the lower-paid workers?

Despite the enormous upheavals in our economy, and despite the erosion of the dollar which causes a strain on all of our budgets, we are proposing what was then, and most assuredly is now, a very modest bill.

For the most part, this legislation does not affect those workers to whom organization and skills have brought a fair share of the fruits of our society.

Rather, its primary design is to benefit that segment of our working population that is unorganized, unskilled, and toiling in poverty

This bill will incorporate into the Fair Labor Standards Act a breadth of coverage and a minimum wage level which will bring the act closer than at any time in its 35-year history to meeting its basic, stated objective—the elimination of "labor conditions detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency and general well-being of workers."

This bill seeks to achieve this purpose by extending the law beyond the 49.4 million currently covered employees to 7 million additional workers employed in retail and service industries, Federal, State, and local government activities, on farms and as domestics in private homes; and, by increasing the minimum wage in steps to $2.20 an hour.

The Fair Labor Standards Act represents one of our fundamental efforts to direct economic forces into socially desirable channels.

It was designed to protect workers from poverty by fixing a floor below which wages could not fall, to discourage excessively long hours of work through requiring premium payments for overtime work, and to outlaw oppressive child labor in industry.

The desirability of this effort was emphasized by President Roosevelt, in his second inaugural address:

> I see one-third of a nation ill-housed, ill-clad, ill-nourished * * * The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.

We have made substantial progress in eliminating poverty in America since President Roosevelt's 1937 inaugural address, but today 24.5 million Americans—12 percent of our population—are still living in poverty by official Government standards.

The present minimum wage of $1.60 yields to a full-time working head of a family of four a gross weekly wage of $64 or $3,200 per year, almost $1,300 less than the poverty level and leaves the working poor family eligible for welfare.

The wage of $1.60 an hour—$1.30 for farm workers—was set by the Congress in 1966.

At that time, it was heralded as a wage rate which would move the working poor above the poverty threshold.

However, economic developments in the last several years have drastically curtailed the purchasing power of the minimum wage.

Between 1966, when Congress amended the FLSA to increase the Federal minimum wage from $1.25 to $1.60 an hour, and December 1973, the Consumer Price Index rose 42.5 percent. Between February 1, 1968, the date the $1.60 rate actually became effective for most workers, and December 1973, the Consumer Price Index rose 35.4 percent.

Thus, a substantial increase in the minimum wage is necessary merely to restore the purchasing power of low-wage workers to the levels established by Congress in 1966.

A minimum rate of $2.28 an hour is required merely to compensate for increases in the Consumer Price Index between 1966 and December 1973.

Most witnesses before the committee during the past 3 years have differed as to how much of an increase in the minimum wage should be legislated, and how fast that increase should be implemented, but the testimony overwhelmingly pointed up the need for an increase now.

The Secretary of Labor, for example, testified in favor of a minimum wage increase, citing a general rising trend in wages, and particularly rising prices.

Pointing to the rapidly rising cost of living last year, Secretary Brennan said:

> Workers in the low-wage sectors of our economy have been the hardest hit. Generally, they do not have the skills or bargaining position necessary to increase their wage as the cost of living goes up. . . .

And it has gotten significantly worse since then. The present bill is an attempt to insure that millions of low-wage workers throughout the Nation—workers whom this act is specifically designed to protect—will regain the ground they have lost because of the inflation which we have experienced in recent years.

Congress recognized in the Economic Stabilization Act Amendments of 1971 and 1973 that these low-wage workers, should not be subject to the wage controls currently applicable to other workers, by exempting from controls increases in the minimum wage and defining substandard earnings to mean earning less than those resulting from a wage or salary rate which yields $3.50 per hour or less.

I will restate my belief that a successful anti-inflation program cannot depend upon keeping the income of millions of American workers below officially established poverty levels.

I support the committee's view that by raising the minimum wage rate, extending minimum wage protection to millions of low-wage workers who do not currently enjoy such protection, and eliminating overtime exemptions where they have been shown to be unnecessary, the economy will be stimulated through the injection of additional consumer spending and the creation of a substantial number of additional jobs.

Establishment of a minimum wage rate at a level which will at least assure the worker an income at or above the poverty level is essential to the reduction of the welfare rolls and overall reform of the welfare system in the United States.

The 35 percent increase in the consumer price index since the last mini-

mum wage increase in 1968 clearly shows the burden which inflation imposes on the minimum wage worker—the worker who typically does not get a raise unless the Congress mandates a raise through FLSA adjustments.

If additional support for a minimum wage increase appears necessary, one needs only to convert into an hourly wage rate the "lower" budget for a family of four.

According to the Bureau of Labor statistics, this budget by December 1973, costs $8,102 a year, or about $4.05 an hour.

In light of these figures, the recommended rates of $2 and $2.20 appear most conservative.

Labor Department studies on effects of minimum wage increases have looked repeatedly into the matter of indirect or ripple effects and have documented the fact that when the minimum is raised, the wage spread is narrowed and there is no general upward movement of wages.

We recognized that a higher minimum wage may mean increased employer costs, but it also means increased purchasing power in the hands of the poor, and a greater demand for goods and services.

For the worker, it means less hardship and greater dignity.

For the Government, it means lower welfare costs.

The economic effects studies of the Labor Department also completely discredit the thesis that minimum wage increases have any discernible effect on inflation.

Previous increases in the minimum wage rate of greater percentage than provided in the present bill have been absorbed easily by the economy, and there is no reason to assume that a different result would obtain under this bill.

In fact, the direct payroll costs of the committee bill will be only 0.4 percent of the total national wage bill in the first year, 0.3 percent in the second year, 0.2 percent in the third year, and 0.05 percent in the fourth year.

In short: this bill is not inflationary.

In the meantime, productivity has been rising and the increases are reflected in soaring profits and widening profit margins rather than in wages.

Prices have been skyrocketing, but wages appear to have been held in check.

Between 1972 and 1973, gross average hourly earnings increased 6.6 percent on top of increases of 6.4 percent between 1971 and 1972, and 6.5 percent between 1970 and 1971.

The minimum wage worker who is still at $1.60 an hour has not shared even in these modest, controlled wage increases.

That worker is still waiting for the Congress to act, and cannot help but be disillusioned by the legislative process when he or she realizes that prices for such staple items as hamburgers, fish, eggs, chuck roast, and potatoes are increasing at astronomic rates.

I would like to discuss briefly the major provisions of the bill.

The bill provides for a statutory minimum wage of $2.20 an hour for all covered workers, but establishes different time schedules for achieving this standard for various categories of employment.

Fundamental to our deliberations was the notion of parity—that all workers should be treated alike for purposes of minimum wage.

However, we were mindful of the historical development of the Fair Labor Standards Act and the need to mitigate the initial impact of expanded coverage.

Therefore, the bill provides for staged increases in the minimum wage depending upon when specific workers were first brought under the act.

All mainland nonfarm workers covered prior to 1966 will attain a $2.20 minimum wage 1 year from the effective date.

An additional step is provided for nonfarm workers newly covered under the 1966 and 1974 amendments.

They will reach parity with other workers at the $2.20 rate 2 years from the effective date.

Farmworkers will achieve parity at the $2.20 rate 3 years after the effective date.

In addition, special provision is made for achieving minimum wage parity for workers in Puerto Rico and the Virgin Islands.

If the conditions that poverty breeds in this country are to be changed, poverty wages must be eliminated.

These conditions will not change unless the FLSA minimum wage is increased, because minimum wage workers rarely have the bargaining position or the skills necessary to increase their wages as the cost-of-living increases.

In essence, Congress must act in the interest of the Nation's working poor.

Workers who toil at the minimum wage level are poor people by the standards of our society.

They are working full time, but they are poor.

In the 1969 report on the minimum wage, Secretary of Labor Wirtz stated that:

> "Poverty" is erroneously identified in loose thinking with "unemployment." * * * Whatever basis there is in any of these criticisms or proposals (of antipoverty efforts) commends strongly a first step of seeing to it that when a person does work, he gets enough for it to support himself and his family.

A gross weekly income of $64, which is all that the current minimum wage provides to a full-time worker, hardly meets that criterion.

The provisions of the committee bill are consistent with the wage provisions of last year's Congress-approved bill.

The bill reflects an awareness that to raise the minimum wage without expanding the coverage of the act would serve to deny even the minimum benefits of the act to large groups of workers who have been denied the protection of the act for more than 30 years.

The committee reviewed present coverage, as well as the gaps therein, and determined that a strong need exists for covering domestics, additional workers in retail and service industries and in Government.

The committee also determined that local seasonal hand harvest laborers should be included for purposes of the 500 man-day test, which covers large farms.

The retention of the 500 man-day test provides that workers on small farms will not be covered. In other words, the bill does not reach out to those small farms, pretty much the small family farms.

The committee carefully examined the economic implications of extending coverage, and was persuaded that wages should go up for workers on the lowest rung of the wage ladder and that the economy could easily absorb these raises.

I ask unanimous consent to include in the RECORD a chart showing the expansion of coverage.

The PRESIDING OFFICER (Mr. HELMS). Without objection, it is so ordered.

ESTIMATED NUMBER OF NONSUPERVISORY EMPLOYEES BROUGHT UNDER THE MINIMUM WAGE PROVISIONS OF THE FAIR LABOR STANDARDS ACT BY S. 2747 (WILLIAMS-JAVITS BILL)

[In thousands]

Industry	Presently covered by the minimum wage provisions of the FLSA	Exempt or not covered by minimum wage provisions of the FLSA		
		Total	Covered by S. 2747 [1]	Not covered by S. 2747
All industries	49,427	14,625	6,877	7,748
Private sector	45,898	9,546	1,798	7,748
Agriculture	513	719	25	694
Mining	568	5	----------	5
Contract construction	3,608	17	----------	17
Manufacturing	17,524	104	42	62
Transportation and public utilities	4,104	77	----------	77
Wholesale trade	2,683	8	----------	8
Retail trade	7,149	3,866	587	3,279
Finance, insurance, and real estate	2,662	151	----------	151
Service industries (except private households)	7,087	2,539	126	2,413
Private households	----------	2,060	1,018	1,042
Public sector	3,529	5,079	5,079	----------
Federal Government	615	1,693	1,693	----------
State and local government	2,914	3,386	3,386	----------

[1] No estimates have been prepared of the number of employees of conglomerates with annual sales of more than $10,000,000 who would be brought under the act by S. 2747.

Note: Estimates exclude 2,147,000 outside salesmen and relate to May 1973 for agriculture, October 1973 for education and September 1973 for all other industries.

Mr. WILLIAMS. Mr. President, the committee bill extends the act to employees of individual retail and service establishments—except "mom and pop" stores—which are part of enterprises with gross annual receipts of more than $250,000.

The bill would not directly affect franchised or independently owned small—less than $250,000 annual receipts—retail and service firms, nor would it extend coverage to the so-called mom and pop stores.

The bill would bring under the minimum wage provisions of the act all employees in private household domestic service earning "wages"—$50 per quarter—for purposes of the Social Security Act, except casual babysitters, and companions, but retains an overtime exemption for such domestic service employees who reside on their employer's premises.

The reasons for extending the minimum wage protection of the act to domestics are so compelling and generally recognized as to make it hardly necessary to cite them.

The status of household work is far down in the scale of acceptable employment.

It is not only low-wage work, but it is highly irregular, has few, if any, nonwage benefits, is largely unprotected by unions or by any Federal or State labor standards.

S. 2747 extends FLSA coverage to almost 5 million nonsupervisory employees in the public sector not now covered by the act.

In 1966, some 3.3 million nonsupervisory Government employees, primarily employees in State and local hospitals, schools, and other institutions, were covered.

With enactment of the amendments contained in S. 2747, virtually all nonsupervisory Government employees will be covered.

Coverage of Federal employees is extended by the bill to most employees, including Wage Board employees, nonappropriated fund employees, and employees in the Canal Zone.

The committee bill charges the Civil Service Commission with responsibility for administration of the act so far as Federal employees—other than employees of the Postal Service, the Postal Rate Commission, or the Library of Congress—are concerned.

There are a number of reasons to cover employees of State and local governments.

The committee intends that Government apply to itself the same standard it applies to private employers.

Certainly, this is a principle that was enunciated clearly in the debates on substantially the same bill on the two prior occasions when it was before the Senate.

This principle was also manifested in 1972 when the Senate overwhelmingly voted to apply Federal equal employment opportunity standards to public sector employers.

Equity demands that a worker should not be asked to work for subminimum wages in order to subsidize his employer, whether that employer is engaged in private business or in Government business.

We made an effort to minimize any adverse effects of overtime requirements by providing for a phase-in of those public employees who are most frequently required to work more than 40 hours per week, the public safety and firefighting employees.

The bill includes a special overtime standard for law enforcement and fire protection employees, including security personnel in correctional institutions.

S. 2747 provides parity for covered farmworkers.

Under this proposal, the Fair Labor Standards Act would be amended to achieve a $2.20 minimum wage for all covered workers, including those employed in agriculture.

To facilitate adjustments to this new concept of wage equality, a period of staged increments has been introduced.

The schedule would be as follows: $1.60 during the first year after the effective date, $1.80 during the second year, $2 during the third year, and $2.20 thereafter.

S. 2747 amends the Fair Labor Standards Act by prohibiting the employment in agriculture of all children under the age of 12, except those working on farms owned or operated by their parents, or on noncovered farms, the small farms.

Children ages 12 through 15 will be permitted to work but only during hours when school is not in session, provided that all 12- and 13-year-olds must either receive written parental consent or work only on farms where their parents are employed.

Thirty-five years ago, Congress reacted to a national outcry by banning industrial child labor.

However, since 1938, the Nation has permitted in the fields what it has prohibited in the factories—oppressive and scandalous child labor.

This bill eliminates the shameful double standard.

The fresh-air sweatshop should become a thing of the past.

Mr. President, I will say that the farm sweatshops, even though they might be out of doors are not always blessed with fresh air. There is lots of dust and pollution. Even though it is under a roof that is the sky, up from the fields and out of the products of the fields comes a great deal that is unhealthy and does a great deal of damage to the otherwise fresh air.

The bill also provides for the gradual achievement of minimum wage parity for workers in Puerto Rico and the Virgin Islands with workers on the mainland, except that the minimum wage for certain hotel, motel, restaurant, and food service employees, as well as Federal and Virgin Island Government workers, will be the same as the minimum wage for counterpart mainland employees on the effective date.

S. 2747 repeals or modifies a number of the exemptions presently incorporated in the Fair Labor Standards Act, including some of the complete minimum wage and overtime exemptions as well as some which apply only to the overtime standard.

The Fair Labor Standards Act is a complex piece of social legislation.

In large part, the complexity of the law is an outgrowth of compromise entered into over a 30-year period in order to achieve, to the fullest extent possible, one basic purpose of the act.

A careful review led us to conclude that a number of the exemptions presently incorporated into the act should now be eliminated.

All workers are entitled to a meaningful minimum wage and to premium pay for overtime work.

We approached the matter of special exemptions by applying a simple rule.

Unless the proponents of an exemption made the case for continuing the exemption in its present form, it was modified or removed.

However, the bill provides for two special studies by the Secretary of Labor.

The first study is of the economic effects of the extensions of minimum wage and overtime coverage made by this bill, and the second study is of the justification, or lack thereof, for all the minimum wage and overtime exemptions remaining under sections (13(a) and 13(b)) of the Fair Labor Standards Act.

I ask unanimous consent to have printed at this point in the RECORD excerpts from the committee report explaining the treatment of exemptions in the bill.

There being no objection, the excerpts ordered to be printed in the RECORD, as follows:

EXCERPTS FROM THE COMMITTEE REPORT

EXEMPTIONS

S. 2747 repeals or modifies a number of the exemptions presently incorporated in the Fair Labor Standards Act, including some of the complete minimum wage and overtime exemptions as well as some which apply only to the overtime standard.

The FLSA is a complex piece of social legislation. In large part the complexity of the law is an outgrowth of compromises entered into over a 30-year period in order to achieve, to the fullest extent possible, the basic purposes of the Act.

Careful review led the Committee to conclude that a number of the exemptions presently incorporated into the Act should now be eliminated or sharply modified. The Committee accepts as simple equity the basic concept that all workers are entitled to a meaningful minimum wage and to premium pay for overtime work. The Committee generally approached the matter of special exemptions by applying a simple rule. Unless the proponents of an exemption made the case for continuing the exemption in its present form, it was modified or removed. The Committee is aware that the low-wage worker, whose economic status is in large part determined by the FLSA, does not typically communicate with the Congress either by testifying on bills or by writing letters outlining his position on the legislation. As in the past, the Congress must represent the public conscience in the matter of the low-wage workers and minimum wage legislation.

The Committee is aware that the Department of Labor has been studying these exemptions over the years and many reports have been submitted to the Congress recommending that these exemptions be eliminated, phased out or modified. However, the Congress has taken action to remove only a limited number of special exemptions over the years.

Each time that the Act has been amended most of the special exemptions have been ignored. In large part, this reflected the fact that amendments to the Act are not enacted

until the level of the minimum wage is obsolete and the primary action of the Congress has been limited to raising the minimum wage to a meaningful level. Only in the course of enacting the last two series of amendments—1961 and 1966—did the Congress expand coverage at the same time as it raised the minimum wage. Although the question of whether a need for many of the special exemptions still existed was raised and there was recognition that there was no justification for continuing at least many of them, action was postponed.

This Committee can see no justification for further delay. The research surveys conducted by the Department of Labor have been summarized in special reports to the Congress as part of the annual submission under Section 4(d) of the FLSA. The special economic evaluations and appraisals were included in the Annual Reports of the Administrator of the Wage and Hour and Public Contract Divisions of the Department of Labor.

Included among the research surveys were studies on motion picture theaters, small logging, agricultural processing, state, county, and municipal employees, motor carriers, domestics, food service employees, and tips as a part of wages.

The administrative studies conducted by the Department of Labor have run the gamut of studies from those designed to expand coverage to include all activities "affecting commerce" to studies of how best to amend the statute to insure that employees are actually paid the back wages found due them under the statute.

The Committee believes that these matters have been studied too long and that steps to correct injustices must be taken now. The Committee notes that Secretary Brennan agreed in part with the view of the majority when he appeared before this Committee on June 7, 1973. He said, in part:

". . . one aspect of the Fair Labor Standards Act that gives me concern is the provisions which give certain industries exemptions from the minimum wage and overtime standards and in some cases just the overtime standard."

The Committee has concluded that certain exemptions can be eleminated or modified at this time without harm to the industry involved.

STUDY OF ECONOMIC EFFECTS OF CHANGES MADE BY THIS BILL AND OF REMAINING EXEMPTIONS

The bill provides for a special study by the Secretary of Labor, in addition to his usual annual report of the justification, or lack thereof, for all the minimum wage and overtime exemptions remaining under sections 13(a) and 13(b) of the FLSA. The Secretary's report on this study is due by January 1, 1976. Many of the remaining exemptions in section 13(a) and (b) have been in the law since 1938, and the Committee believes that each of them should be reviewed in the light of current conditions.

Motion picture theaters

S. 2747 repeals the minimum wage but retains the overtime exemption currently applicable to all employees of motion picture theaters. Approximately 59,000 workers are currently denied the protection of the FLSA because of this blanket exemption.

A 1966 study of motion picture theaters by the Department of Labor disclosed the prevalence of extremely low wages in the industry. While motion picture projectionists were paid well above the minimum wage, most employees were paid substandard wages. Concession attendants, cashiers, ushers, and janitors were paid well below the minimum wage.

In 1961, when motion picture theaters received a special minimum wage and overtime exemption, the poor economic condition of the industry was cited by industry representatives as a major reason for the exclusion.

This argument was repeated in 1966 when the Congress was considering amendments to the FLSA which would have eliminated this exemption. Industry representatives argued against removing the exemption on the basis that increased labor costs could not be passed on to consumers in the form of higher admission prices by motion picture theaters because of the depressed state of the industry.

However, the validity of this argument is now open to serious challenge. Price data published by the Bureau of Labor Statistics of the Department of Labor indicate that indoor movie admission costs have increased by 39 percent between 1967 and the beginning of 1972. Admission costs in drive-in movies have increased even more—43 percent since 1967. These increases were far in excess of price increases for products of covered industries and for almost all services covered by the Act.

The Congress has long recognized the need for minimum wage protection for employees in motion picture theaters. Conditions in the industry and the present price structure indicate that removal of this exemption would bring substantial benefits to low-wage workers and could be easily absorbed by the industry.

Small logging crews

The Committee bill removes the minimum wage exemption currently available to forestry and lumbering operations with 8 or fewer employees but retains an overtime exemption for such lumbering operations.

Prior to the 1966 amendments, the exemption applied to employers with 12 or fewer employees. In enacting the 1966 amendments the Congress reduced the 12-man test to an 8-man test and the House Committee report commented on the change as follows:

The decision on eight employees was made after careful consideration and investigation of conflicting facts. The Committee believes the eight-man criterion to be a sound basis for exemption at the present time, but intends to further investigate these logging operations.

According to the Department of Labor, about 42,000 employees are currently exempt under this provision. Many of these workers are paid very low wages and are, in effect, being asked to subsidize their employers.

The Committee found no adverse effect when minimum wage and overtime protection was extended to employers with 8–12 workers. However, employees of such loggers did benefit significantly from the protection of the FLSA. The Committee is persuaded that all logging employees should enjoy the minimum wage protection of the Act, and that this can be accomplished with ease at this time. The Committee was not satisfied that a case had been made for a continued minimum wage exemption. The Committee considered removing the complete minimum wage and overtime exemption but elected to retain the overtime exemption at this time. This continues the gradual approach to full coverage which has been applied to this industry.

The Committee considered the recordkeeping problems raised by the industry but concluded that current Department of Labor regulations on this point offered sufficient flexibility to meet the legitimate needs of this industry. The Committee noted in this regard that small loggers have been able to keep tax records and complex piece-rate records for some time.

Shade-grown tobacco

S. 2747 would remove the special minimum wage but retain the overtime exemption applicable to employees engaged in the processing of shade-grown tobacco prior to the stemming process for use as a cigar wrapper tobacco.

Prior to the *Mitchell* v. *Budd*, 350 U.S. 473 (1956) decision, it had been held that the processing of shade-grown tobacco was a continuation of the agricultural process and hence came within the scope of the term "agriculture." However, the U.S. Supreme Court ruled that workers engaged in processing leaf tobacco for cigar wrappers after delivery of the tobacco to bulking plants were not engaged in agriculture and were not exempt as agricultural employees, regardless of whether (1) the plants were operated exclusively for the processing of the tobacco grown by the operators, or (2) the employees who worked on the farms where the tobacco was grown also worked in the plants processing the tobacco. The Supreme Court decision laid particular emphasis on the fact that the processing operations substantially change the natural state of the leaf tobacco and that the farmers who grow the tobacco do not ordinarily perform the processing. Typically, this work is done in bulking plants.

The 1961 amendments to the FLSA provided a special exemption for processing shade-grown tobacco, thus negating the decision of the Supreme Court.

The Committee bill removes the special exemption because it has created a situation in which a tobacco processing employee who would otherwise enjoy the protection of the FLSA, loses such protection solely because he had previously worked in the fields where the tobacco was grown; co-workers who had not worked in the field enjoy "fair labor standards." The student certification program under section 14 of the Act as it relates to such field work is unaffected by this bill.

Agricultural processing industries

S. 1861 phases out the existing partial overtime exemptions for seasonal employers generally (Section 7c), and seasonal or seasonally-peaked employers specifically engaged in agricultural processing of perishable raw commodities (Section 7d). Based on 1973 Department of Labor estimates, 714,000 workers were employed in establishments qualifying for these exemptions.

The phase out of section 7(c) and 7(d) exemptions other than for cotton processing and sugar processing, is as follows:

1. On the effective date the seasonal periods for exemption are reduced from 10 weeks to 7 weeks and from 14 weeks to 10 weeks.

2. On such date, the workweek exemptions are reduced from 50 hours to 48 hours.

3. Effective January 1, 1975, the seasonal periods for exemption are reduced from 7 weeks to 5 weeks and from 10 weeks to 7 weeks.

4. Effective January 1, 1976, the seasonal periods for exemption are reduced from 5 weeks to 3 weeks and from 7 weeks to 5 weeks.

5. Effective January 1, 1977, sections 7(c) and 7(d) are repealed.

At present under Section 7(c), employers who are determined by the Secretary of Labor to be in industries seasonal in nature are free from FLSA overtime jurisdiction for a 14-week period during which employees may work up to 10 hours a day or fifty hours a week without being subject to a time and one-half wage rate.

Under the existing 7(d) exemption, employers designated by the Secretary of Labor to have either seasonal or seasonally-peaked agricultural processing operations involving perishable raw commodities are entitled to a 14 week period free of FLSA overtime restrictions if their employees do not exceed 10 hours a day or 48 hours a week during that time period.

Both Sections 7(c) and 7(d) have identical reciprocity clauses which entitles any employer who qualifies under the definition of both sections to receive an aggregate exemption of two ten-week periods (one under 7(c) and one under 7(d)) outside of

the FLSA overtime standard. Several industries have been determined as qualifying for the dual exemption.

The origins of these two sections date to the beginning of the FLSA in 1938. The predecessor of the current Section 7(c) was the former Section 7(b)(3) whose exemption provided for up to 12 hours a day or 56 hours a week before the FLSA overtime standard became effective. The present Section 7(d) is successor to the former section [7(c)], which had permitted among other things, year-round overtime exemptions for several categories of employers, engaged in agricultural processing. In addition, employers qualifying under both former sections could claim up to an aggregate of 28 weeks of exemptions.

However, in 1966, after 28 years of favored treatment, Congress determined that the agricultural processing industry no longer warranted the original Act's broadbrush treatment. Thus, as a result of the 1966 FLSA amendments Congress narrowed the exemptions to their present state.

The complete elimination of the agricultural processing overtime exemption was anticipated in the 1966 FLSA Amendments. The Conference Report stated in part:

It was the declared intention of the Conferees to give notice that the days of overtime exemptions for employees in the agricultural processing industry are rapidly drawing to a close because advances in technology are making the continuation of such exemptions unjustifiable.

A detailed two-volume Department of Labor survey, entitled "Agricultural Handling and Processing Industries—Overtime Exemptions Under the Fair Labor Standards Act, 1970", found with reference to Sections 7(c) and 7(d):

(1) Existing exemptions are not fully utilized.

(2) Many processing establishments are now paying premium rates for hours over 40 a week.

(3) Currently, some industries which qualify for 20 weeks of exemption are less seasonal than others which qualify for 14 weeks.

(4) A 40 hour basic straight time standard would eliminate inequities which currently exist between employers who now pay premium overtime rates either because they elect to do so voluntarily or because they are covered by a collective bargaining agreement and employers who avail themselves of the overtime exemption.

(5) Additional jobs could be created by second and third shift operations in those industries where large shipments of raw materials are received in relatively short periods.

(6) Technological advances in recent years have lengthened the storage life of perishable products.

(7) Grower-processor contracts permit the processor to specify the time for planting, harvesting, and delivery, and thus make possible better work-scheduling.

Based on the above finding, former Secretary of Labor (and present Secretary of the Treasury) George Shultz in his "Report to the Ninety-First Congress on Minimum Wage and Maximum Hours under FLSA" (January 1970), concluded:

"The study of overtime exemptions available to the agricultural handling and processing industries indicates the need for reappraising the favored position which has long been given these industries through exemption from the 40 hour maximum work week standard. It is my recommendation that the exemptions currently available under Section 7e, 7d, . . . be phased out."

These same thoughts were echoed by the current Secretary of Labor, Peter Brennan, at hearings before the Labor Subcommittee on June 7, 1973. Mr. Brennan stated:

"We believe that the Fair Labor Standards Act can be modified as to its present partial overtime exemption for seasonal industries and industries engaged in processing fresh fruits and vegetables.

"At one time the fresh food processing industry was in a very unusual position. Since it is entirely dependent on the timing and abundance of agricultural produce for its perishable "raw materials", it was necessary to operate almost continuously during harvest season. A great deal of overtime work was required in order to process the fresh food coming in from the farms before it spoiled.

"Advancements in technology, however, have now made it possible for initial processing to be accomplished rapidly and overtime requirements have been reduced. We believe that the present law can now be changed and would be glad to work out language with the Committee that would not adversely affect the employment situation nor add undue pressures to food prices, which are a matter of special concern in the present economic picture."

Thus, the record is clear. Since the 1966 Amendments reduced the overtime exemption for agricultural processing there has been a sharp decline in the amount of overtime worked by employees in the affected industries.

Claims of adverse effects on the industry have been greatly exaggerated. There is every reason to believe that the industry can make the necessary adjustment when these special exemptions are removed.

S. 2747 provides for a limited overtime exemption (14 weeks, 10 hours per day, and 48 hours per week) for certain employees engaged in activities related to the sale of tobacco. Such employees are currently covered by the section 7(c) exemption pursuant to determination by the Secretary.

Railroad and pipelines

The Fair Labor Standards Act currently exempts from the overtime provisions of the Act any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act.

Part I of the Interstate Commerce Act pertains to railroad employees and employees of oil pipeline transportation companies.

The Committee bill would retain the overtime exemption for railroad employees but would remove the overtime exemption for employees of oil pipelines.

The Committee, in reviewing the historical basis for this exemption, found that there was no testimony with respect to oil pipeline transportation companies.

This industry was apparently exempted because it is covered along with railroads under part I of the Interstate Commerce Act and a case had been made for exempting railroad employees.

The Committee has concluded that there is no basis for continuing to provide an overtime exemption for employees of oil pipelines. Employees of gas pipelines are now covered by the overtime provisions of the FLSA. The action of the Committee eliminates a longtime competitive inequity between oil pipelines and gas pipelines.

Seafood processing

S. 2747 phases out the overtime exemption currently available in Section 13(b)(4) for "any employee employed in the processing, marketing, freezing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any product thereof," as follows:

1. In the first year after the effective date of the 1974 Amendments, the workweek exemption is 48 hours.

2. In the second year, the workweek exemption is 44 hours.

3. Effective on the beginning of the third year, the exemption is repealed.

The Fair Labor Standards Act as originally enacted provided an exemption under Section 13(a)(5) for:

Any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or byproducts thereof.

The 1949 amendments retained the complete exemption for fishing and processing, except canning. The minimum wage exemption for canning was eliminated, but the overtime exemption was retained under a new Section 13(b)(4).

The 1961 amendments removed the minimum wage exemption for employees employed in "onshore" operations, such as processing, marketing, distributing and other fish-handling activities. The overtime exemption for "onshore" operations was retained by adding such operations to the exemption already provided for the canning of seafood under Section 13(b)(4).

Removal of the overtime exemption for seafood canning and processing is part of the Committee's effort to achieve parity under the law for all workers to the maximum extent possible at this time. Just as in the case of agricultural processing, no case has been made for continuing the exemption.

Local transit

Currently, the overtime provisions of the Fair Labor Standards Act do not apply with respect to any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban, or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway and carrier are subject to regulation by a State or local agency.

The Committee bill would eliminate this overtime exemption in three steps, except with respect to time spent in "charter activities" under specified conditions. The hours of employment will not include hours spent in charter activities if—(1) the employee's employment in such activities was pursuant to an agreement or understanding with the employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment. These conditions are set so as to emphasize that the Committee intends that hours spent in "charter activities" as a part of the regular workday or workweek are to be included in the definition of "hours worked" under the Act.

The Committee has been persuaded that the transit industry has been adjusting to a shorter workweek for some time now. Collective bargaining agreements typically call for overtime after 40 hours a week—and in many cases after 8 hours a day. A large segment of the industry is now covered by such contracts. In addition, an overtime standard was applied to nonoperating employees of the industry by the 1966 amendments. The Committee bill requires that employees be paid time-and-one-half their regular rate of pay for all hours over 48 per week, beginning with the effective date; after 44 hours, 1 year later; and after 40 hours at the end of the second year and thereafter. This gradual approach ensures ease of adjustment.

It is noted that by virtue of the Committee's action on coverage of State and local government employment, together with its action on overtime pay in the local transit industry, operating employees of publicly and privately owned transit companies will be treated identically.

A question was raised concerning the applicability of the overtime provisions of the Act in the case of certain collective bargain-

ing agreements involving local transit in the New York area which provide for straight-time pay for certain off-duty hours. The Committee notes that section 7(e)(2) of the FLSA provides that "payments made for periods when no work is performed due to . . . failure of the employer to provide sufficient work . . . are not made as compensation for hours of employment." The Committee also notes that the Department of Labor's regulations concerning "Hours Worked" contain the following provision (29 C.F.R. 785.16 (a)):

"OFF DUTY"

"(a) *General.* Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case."

In 1972, by vote of 68–24 the Senate rejected an amendment to retain the overtime exemption for local transit.

Hotels, motels, and restaurants

S. 2747 eliminates the complete overtime exemption for employees employed by hotels, motels and restaurants and substitutes a limited overtime exemption as follows:

During the first year overtime compensation will be required for hours of employment in excess of 48 in a week and after the first year such compensation will be required for hours of employment in excess of 46 in a week. For maids and custodial employees of hotels and motels the phaseout is as follows:

1. 48 hours in the first year.
2. 46 hours in the second year.
3. 44 hours in the third year.
4. Repealed thereafter.

In setting an overtime standard for employees of hotels, motels and restaurants the Committee recognized that the length of workweeks have been declining in these activities. It is interesting to note that when minimum wage coverage was extended to these workers by the 1966 amendments, the Department of Labor reported to the Congress that there was a reduction in the prevalence of long workweeks in these industries, even though an overtime exemption was retained.

Tip allowance

S. 2747 modifies section 3(m) of the Fair Labor Standards Act by requiring employer explanation to employees of the tip credit provisions, and by requiring that all tips received be paid out to tipped employees.

Currently, the law provides that an employer may determine the amount of tips received by a "tipped employee" and may credit that amount against the applicable minimum wage, but amounts so credited may not exceed 50 percent of the minimum rate. Thus, a tip credit of up to $.80 an hour may currently be deducted from the minimum wage of a tipped employee. (A tipped employee is defined as an employee who customarily and regularly receives more than $20 a month in tips.)

The Committee re-examined the role of tips as wages and the concept of allowing tips to be counted as part of the minimum wage. The Committee reviewed the study of tips presented to the Congress by the Department of Labor in 1971 as well as provisions of State minimum wage laws which permit the counting of tips toward a minimum wage.

The Committee was impressed by the extent to which customer tips contributed to the earnings of some hotel and restaurant employees in March 1970 (the date of the Labor Department survey). After reviewing the estimates in this report, the Committee was persuaded that the tip allowance could not be reduced at this time, but that the tipped employee should have stronger protection to ensure the fair operation of this provision. The Committee bill, in this respect, is consistent with the will of the Senate as expressed in an 89–1 vote in 1972.

Labor Department Regulations define a tip as follows (Part 531—Wage Payments under the Fair Labor Standards Act of 1938):

A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for him. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally he has the right to determine who shall be the recipient of the gratuity.

Under these circumstances there is a serious legal question as to whether the employer should benefit from tips to the extent that employees are paid less than the basic minimum wage because the employees are able to supplement their wages by special services which bring them tips.

Setting aside for the present the ethical question involved in crediting tips toward the minimum wage, the Committee is concerned by reports that inflation has been deflating tips.

In view of these reports the Committee intends that the Department of Labor should take every precaution to insure that the employee does in fact receive tips amounting to 50 percent of the applicable minimum wage before crediting that amount against the minimum wage.

The bill amends Section 3(m) by deleting the following language pertaining to the computation of tip credits: "except that in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of the tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence." The deletion of this language is to make clear the original intent of Congress to place on the employer the burden of proving the amount of tips received by tipped employees and the amount of tip credit, if any, which such employer is entitled to claim as to tipped employees. See *Bingham* v. *Airport Limousine Service,* 314 F. Supp. 565 (W. D. Ark. 1970) in which the court refused to "speculate" as to sums the employees might have received in tips when the employer failed to present "any objective information" on the subject.

The tip credit provision of S. 2747 is designed to insure employer responsibility for proper computation of the tip allowance and to make clear that the employer is responsible for informing the tipped employee of how such employee's wage is calculated. Thus, the bill specifically requires that the employer must explain the tip provision of the Act to the employee and that all tips received by such employee must be retained by the employee. This latter provision is added to make clear the original Congressional intent that an employer could not use the tips of a "tipped employee" to satisfy more than 50 percent of the Act's applicable minimum wage. H. Rept. 871, 89th Cong., 1st Sess., pp. 9–10, 17–18, 31; 111 Cong. Rec. 21829, 21830; 112 Cong. Rec. 11362–11365, 20478, 22649. See *Melton* v. *Round Table Restaurants, Inc.,* 20 WH Cases 532, 67 CCH Lab. Cas. 33,630 (N.D. Ga.).

The tip provision applies on an individual employee basis, and the employer may thus claim the tip credit for some employees even though the employer does not meet the requirements of this section with respect to other employees. Nor is the requirement that the tipped employee retain such employee's own tips intended to discourage the practice of pooling, splitting or sharing tips with employees who customarily and regularly receive tips—*e.g.,* waiters, bellhops, waitresses, countermen, busboys, service bartenders, etc. On the other hand, the employer will lose the benefit of this exception if tipped employees are required to share their tips with employees who do not customarily and regularly receive tips—*e.g.,* janitors, dishwashers, chefs, laundry room attendants, etc. In establishments where the employee performs a variety of different jobs, the employee's status as one who "customarily and regularly receives tips" will be determined on the basis of the employee's activities over the entire workweek.

Nursing homes

The Fair Labor Standards Act currently provides a partial overtime exemption for employees of nursing homes. The Act provides an overtime exemption for any employee of a nursing home who receives compensation for employment at time and one-half the regular rate of pay for all hours in excess of 48 in a week.

S. 2747 replaces the limited overtime exemption for employees of nursing homes (overtime compensation required for hours of employment in excess of 48 in a week) by an overtime exemption (initiated by an agreement between the employer and his employees) which substitutes a 14-consecutive-day work period for the workweek and requires overtime compensation for employment over 8 hours in any workday and for over 80 hours in such work period.

According to a 1969 report of the Department of Labor there had been a marked decline in average hours per week of nonsupervisory employees of nursing homes between April 1965 and October 1967. The report indicates that the application of a 48-hour workweek standard to nursing homes on February 1, 1967 had very little effect as only a small proportion of the workers worked over 48 hours a week even before the Act was extended to the industry. In April 1968, less than 15 percent of all nursing home employees worked over 44 hours in a week.

Salesmen, partsmen, and mechanics

S. 2747 provides an amendment under which: the overtime exemption for partsmen and mechanics in nonmanufacturing establishments primarily engaged in selling trailers is repealed; the overtime exemption for partsmen and mechanics in nonmanufacturing establishments engaged in selling aircraft is repealed; the overtime exemption for salesmen in automobile, trailer, truck sales and aircraft establishments is retained; the overtime exemption for salesmen, partsmen, and mechanics in farm implement sales establishments is retained; the exemption for partsmen and mechanics in automobile and truck sales establishments is retained and; an overtime exemption is provided for salesmen engaged in selling boats.

The Committee was persuaded that the application of an overtime standard to partsmen and mechanics in trailer dealerships, and to the presently exempt employees in aircraft dealerships would be likely to generate additional jobs, and to promote the training of workers to fill the job. If the industry continues to expand service hours, as recent trends indicate, the overtime penalty should provide considerable stimulus to the creation of new jobs at a time when our economy is experiencing high unemployment rates and the training necessary for meaningful employment in this industry is or should be readily available.

Cotton ginning and sugar processing

S. 2747 repeals the year-round overtime exemption for cotton ginning and sugar proc-

essing employees in Section 13(b)(15) of the Fair Labor Standards Act, but retains the exemption for employees engaged in processing maple sap into maple syrup or sugar.

The amendment to phase down the overtime exemption for cotton ginning and sugar processing employees is as follows:

1. Effective on the effective date, the workweek exemption is as follows: 72 hours each week for 6 weeks of the year; 64 hours each week for 4 weeks of the year; 54 hours each week for 2 weeks of the year; 48 hours each week for the balance of the year.

2. In 1975, the workweek exemption is as follows: 66 hours each week for 6 weeks of the year; 60 hours each week for 4 weeks of the year; 50 hours each week for 2 weeks of the year; 46 hours each week for 2 weeks of the year; 44 hours each week for the balance of the year.

3. In 1976, the workweek exemption is as follows: 60 hours each week for 6 weeks of the year; 56 hours each week for 4 weeks of the year; 48 hours each week for 2 weeks of the year; 44 hours each week for 2 weeks of the year; 40 hours each week for the balance of the year.

The workweek exemptions are applicable during the actual season within a period of twelve consecutive months as opposed to the calendar year and are not limited to a period of consecutive weeks.

In addition, the cotton processing and sugar processing exemptions under section 7 of the law are retained but limited to 48 hours during the appropriate weeks. Furthermore, it is provided that an employer who receives an exemption under this subsection will not be eligible for other overtime exemptions under section 13(b) (24) or (25) or section 7.

The 1970 Report of the Department of Labor on the Agricultural Handling and Processing Industries includes the recommendation of the Secretary of Labor that "consideration should be given to the phasing out of the overtime exemptions currently available to the agricultural handling and processing industries under Section 7(c) and 7(d) of the Fair Labor Standards Act . . . Although focusing primarily on Sections 7(c) and 7(d) of the Act, the survey data also indicate that there is no sound basis for the continuation of the year-round exemptions available under Sections 13(b) . . . (15) of the Act . . ."

Few industries are as highly subsidized and so greatly protected as the sugar industry. The Federal Government makes direct payments for sugar production totalling nearly $100 million a year. It sets and enforces production quotas in the U.S. and specifically restricts foreign imports of sugar for an additional benefit of about $400 million annually to the industry.

The industry is also protected by various Federal laws against crop damage resulting from natural causes.

Many of these employees work in shifts of 12 hours a day for six or seven days a week during the sugar processing season (October 15 to January 15). The law does not require that they be paid overtime premium pay although their counterparts in non-subsidized industries are paid time and one-half their regular rates of pay for all hours over 40 in a week.

Section 13(b)(15) of the Act also provides a year-round unlimited exemption from the maximum hours provisions for cotton ginning. Under section 13(b)(15) an employer is eligible for this exemption when: (1) employees are actually engaged in the ginning of cotton; (2) the cotton must be ginned "for market"; and (3) the place of employment is located in a county where cotton is grown in commercial quantities.

In addition, there is a limited overtime exemption under section 7(c) during the period or periods when cotton is being received for ginning. When applicable, the exemption under section 7(c) may be claimed for all employees, including office workers, exclusively engaged in the operations specified in the industry determination. A survey, conducted in 1967 by the U.S. Department of Agriculture, disclosed 3,753 cotton gins that employed 49,500 nonsupervisory employees during the peak work-week.

It is not uncommon in the cotton ginning industry to have employees working in excess of an 80 hour work-week during the peak season. Sixty-hour work-weeks exist with regular frequency. The exemption under 13(b)(15) enables employers to work their employees often nearly double the normal work-week, without having to pay premium wages. Modification of this exemption would start cotton ginning employees on the road to overtime pay parity with the mainstream of the American labor force.

In the past the industry has made little use of multiple shift operations with only one in four using more than one shift in 1970. Since the majority of the work force consists of "moonlighting" field workers, potential employees are in plentiful supply during the peak season. By using multi-shifts, cotton ginners could reduce the number of overtime hours, while at the same time alleviating the chronic farm unemployment problem (7.5% versus the national average of 4.9% in 1970).

Catering and food service employees

S. 2747 phases out the complete overtime exemption for employees of retail and service establishments who are employed primarily in connection with the preparation or offering of food or beverages either on the premises or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or quests of members of clubs.

S. 2747 requires that catering and food service employees be paid time and one half their regular rate of pay for hours over 48 per week on the effective date, for hours over 44 after 1 year, and for hours over 40 after the second year.

The elimination of the special exemption for food service employees in retail service establishments eliminates a disparity in work standards for employees of the same establishment. For example, food service employees in covered retail establishments are now exempt from the overtime provisions of the Act while retail clerks, in the same establishments, are covered by both the minimum wage and overtime standard. This has been a major source of friction.

It is expected that the gradual phasing out of the overtime exemption will eliminate excessively long hours in food service and catering activities and thus generate additional jobs. Also treatment of food service employees in this manner permits a similar phasing out of the overtime exemptions for bowling establishments, an exemption predicated in large part upon the food service aspects of such establishments.

Telegraphic message operations

S. 2747 repeals the minimum wage and phases out the overtime exemption for persons engaged in handling telegraph messages for the public under an agency or contract arrangement with a telegraph company, if they are so engaged in retail or service establishments exempt under section 13(a)(2) and if the revenues for such messages are less than $500 a month. The amendment to phase out the overtime exemption is as follows:

1. 48 hours in the first year after the effective date.

2. 44 hours in the second year.

3. Repealed thereafter.

Bowling establishments

The Fair Labor Standards Act currently exempts from the overtime provisions of the Act any employee of a bowling establishment if such employee receives compensation for hours in excess of 48 in a workweek at time and one-half the employee's regular rate of pay.

The Committee bill would reduce the straight-time workweek to 44 hours one year after the effective date and to 40 hours one year later.

The Committee notes that bowling fees have advanced by 18 percent since 1967. At the same time, pinsetting machine technology has improved, and automatic pinsetters have replaced hand pinsetters throughout the industry. Overtime coverage is easily compatible with the operative characteristics of the industry. The use of automatic pinsetters has eliminated problems which had previously resulted from daily hourly fluctuations in patronage.

House parents for orphans

S. 2747 provides a new overtime exemption for any employee who is employed with such employee's spouse by a private nonprofit educational institution to serve as the parents of children—

A. Who are orphans or one of whose natural parents is decreased, and

B. Who are enrolled in such institution and reside in residential facilities of the institution, which such children are in residence at such institution, if such employee and such employee's spouse reside in such facilities, receive without cost, board and lodging from such institution, and are together compensated, on a cash basis at an annual rate of not less than $10,000.

The Committee, in proposing this amendment, is primarily interested in insuring that couples who serve as house parents for orphans in educational institutions are assured sufficient flexibility in work standards to protect the interest of the orphans during the periods when such orphans reside in such institutions.

The Milton Hershey School in Hershey, Pennsylvania is one such institution. The Hershey school is a residential vocational school for orphan boys. The students live in 103 separate cottages of 10 to 15 boys each. The Committee has been informed that a married couple lives in each cottage, serving as house parents. The Committee felt that imposition of overtime coverage in this very special employment situation would result in an especially difficult financial and record-keeping situation for such institutions.

The Committee considered, but did not approve, a minimum wage as well as an overtime exemption for such employees. Thus these house parents will continue to be subject to the minimum wage provisions of the Act. An employee and such employee's spouse who serve as house parents of orphans in a nonprofit educational institution, who are paid not less than $10,000 a year in cash wages, and who receive without cost, board and lodging from such institutions would likely be paid in compliance with the minimum wage requirements of the Act.

The Committee recognizes that the Labor Department has issued special rules for calculating "hours worked" for employees residing on employer's premises, including such house parents who have duties which could occur at any time.

It is the Committee's understanding that as to hours worked by such resident employees, the Labor Department's regulations permit a reasonable agreement between the parties which takes into consideration all the pertinent facts surrounding such employment.

Mr. WILLIAMS. Mr. President, the Fair Labor Standards Act demonstrates a congressional awareness of the special problems confronting students who need and want to work while attending school on a full-time basis.

There were, and there continues to be, special provisions for employing learners,

apprentices, student learners and student workers at subminimum rates.

Section 7 of S. 2747 expands the full-time student certificate program currently applicable to retail and service industries and to agriculture to apply to educational institutions. The bill retains the certification procedure, as it now exists, to insure that students will not be used to displace other workers.

The committee rejected a proposal that the Fair Labor Standards Act be amended by loosening the special student certification program and adding a blanket subminimum wage for young people below the age of 18 and for full-time students up to the age of 21.

A similar proposal was rejected by the Senate last year by a vote of 54 to 36.

The committee's rejection of this special subminimum rate was based on the conviction that this would violate the basic objective of the act and that such a standard would contribute to, rather than ease, the critical problem of unemployment because it would encourage the displacement of older workers.

We were convinced that a subminimum wage for youth would violate the basic concept of the act which represents an "economic charter" for the lowest paid workers in the United States.

Mr. WILLIAMS. Mr. President, to achieve its objective, the minimum wage must be an irreducible minimum below which wages for workers will not be allowed to fall.

S. 2747 amends the Age Discrimination in Employment Act of 1967 (Public Law 90–202) to include within the scope of coverage, Federal, State, and local government employees.

The Senate agreed to this extension last year.

Section 8 of the committee bill amends section 16(c) to authorize the Secretary of Labor not only to bring suit to recover unpaid minimum wages or overtime compensation, a right which he currently has, but also to sue for an equal amount of liquidated damages without requiring a written request from an employee.

The addition of liquidated damages is a necessary penalty to assure compliance with the Fair Labor Standards Act.

Currently, all that is required of the employer is that he pay the wages that should have been paid in the first place, without any penalty for violating the act. This is not a deterrent, certainly, to future violations.

It almost encourages employers to see what they might be able to get away with, if they were inclined to be so motivated. But a deterrent is necessary, and that is provided for in this bill.

This section would also allow the Secretary of Labor to bring suit even though the suit might involve issues of law that have not been finally settled by the courts.

At the present time, many of the protections that are written into the act are not being extended to workers because of the current restrictions on the Secretary in bringing suits in areas that have not been finally settled by the courts.

The act places the primary responsibility for the enforcement of the act on the Secretary of Labor; he should have the right to bring suits directly in order to resolve issues of law.

The committee also acted on an amendment to section 16(b) of the act to make clear the right of individuals employed by State and local governments and political subdivisions to bring private actions to enforce their rights and recover back wages under this act.

This amendment is necessitated by the decision of the U.S. Supreme Court in employees of the Department of Public Health and Welfare of Nursing against Department of Health and Welfare of Nursing, decided in April 1973, which held that Congress in extending coverage under the 1966 amendments to school and hospital employees in State and local governments did not explicitly provide the individual a right of action in the Federal courts although the Secretary of Labor was authorized to bring such suits.

In addition, the committee included an amendment to the Portal to Portal Act of 1947 which would preserve existing actions brought by private individuals which would otherwise be barred by the statute of limitations as a result of the April 1973 decision which I have mentioned.

Both of these amendments were included at the request and recommendation of the administration and the Secretary of Labor.

I would add that our committee has been concerned for some time that the Employment Standards Administration of the Department of Labor, which now has responsibility for administering the Fair Labor Standards Act, appears to be considering reordering its priorities in such a way as to downgrade enforcement of this act. The Department must maintain a vigorous enforcement program under this act.

Coverage should be interpreted broadly; and every effort should be made to insure that those employees who have been the victims of violations of this act are made whole.

Improving the Fair Labor Standards Act is a significant achievement only if it is followed by a vigorous enforcement effort designed to bring covered employers into compliance with the new standards as quickly as possible.

Mr. President, another matter of particular concern to the committee, has been enforcement of the Fair Labor Standards Act with respect to the employment of handicapped individuals, and the protection of the rights of such individuals who are institutionalized. Under the Rehabilitation Act of 1973 (Public Law 93–102), the committee ordered an original and full study into employment and wage practices in sheltered workshops and work activity centers; in addition, we have begun our own investigation into enforcement of the Fair Labor Standards Act in institutional settings.

The committee points out that on December 7, 1973, the U.S. District Court for the District of Columbia in a class action involving enforcement of FLSA for patient workers in public and private non-Federal homes, hospitals, and institutions ruled that the Department of Labor has a duty to implement enforcement efforts for such patient-workers and ordered the department within 120 days to notify the institutions of their statutory responsibility to compensate all mentally ill and mentally retarded patient-workers, and to notify all such workers of their rights under the act.

Furthermore, the court ordered the Department to contact all institutions within 1 year to establish and implement the necessary procedures, including special certifications as provided under section 14 of FLSA, so that patient workers will be paid the wages due them. The court's memorandum filed previously on November 14, 1973, stated that:

> Economic reality is the test of employment and the reality is that many of the patient-workers perform work for which they are in no way handicapped and from which the institution derives full economic benefit. So long as the institution derives any consequential economic benefit the economic reality test would indicate an employment relationship rather than mere therapeutic exercise. To hold otherwise would be to make therapy the sole justification for thousands of positions as dishwashers, kitchen helpers, messengers and the like.

Citing section 14 provisions providing for payment of less than the minimum wage for less productive handicapped workers by certification of the Secretary of Labor, and the fact that there is no specific exemption for patient-workers under the act, the court found that mentally ill and mentally retarded patient-workers are covered by the act. It went on to point out that time consuming and costly administrative resources to enforce the provisions for such a class of individuals was no excuse for failing to implement the statutory mandate.

The committee agrees with the court, and takes note of the enforcement procedures which the Department has been ordered to undertake. The committee intends to follow the progress of the Labor Department in respect to these court-ordered activities under FLSA, and if necessary it shall meet with the Department in the near future to oversee these activities.

I ask unanimous consent that the memorandum and the declaratory judgment and injunction order in Souder against Brennan be printed in the RECORD at this point.

There being no objection, the memorandum, declaratory judgment, and injunction order were ordered to be printed in the RECORD, as follows:

[U.S. District Court for the District of Columbia, Civil Action No. 482–73]

NELSON EUGENE SOUDER, ET AL. VERSUS PETER J. BRENNAN, SECRETARY OF LABOR, ET AL.

MEMORANDUM

This is an action for declaratory and injunctive relief presently before the Court on Plaintiffs' Motion for Summary Judgment.[1] Plaintiffs are three resident patient-workers at various state hospitals for the mentally ill or mentally retarded,[2] the American Association on Mental Deficiency,[3] and the National Association for Mental Health.[4] The American Federation of State, County and Municipal Employees, AFL–CIO (AFSCME) has joined as Intervenor-Plaintiff.[5] Defendants are the Secretary of the United States

Footnotes at end of article.

Department of Labor and his subordinates charged with implementing and enforcing the Fair Labor Standards Act of 1938 (FLSA), as amended, 29 U.S.C. § 201 et seq. Plaintiffs seek a determination that the minimum wage and overtime compensation provisions of the Act, 29 U.S.C. §§ 206–207 apply to patient-workers of non-Federal hospitals, homes, and institutions for the mentally retarded and mentally-ill (hereafter collectively referred to as the mentally ill). Plaintiffs further seek to compel the defendant Secretary of Labor and his subordinates to undertake enforcement of the said minimum wage and overtime compensation provisions.

It is undisputed that the Department of Labor has a declared policy of non-enforcement of the minimum wage and overtime provisions with regard to patient-workers at non-Federal institutions for the mentally-ill.[6] It is also clear to the Court that if the Fair Labor Standards Act does apply to such patient-workers then the policy of non-enforcement is a violation of the Secretary's duty to enforce the law.[7] Accordingly, the issue for resolution here is the applicability of the Fair Labor Standards Act to such patient-workers. This is a legal issue properly disposed of here by summary judgment.

Standards Act of 1938, extended coverage under the minimum wage and overtime provisions of the Act for the first time to, inter alia, employees of public and private non-Federal hospitals and institutions for the residential care of the mentally ill. It is clear that these amendments were intended to cover the regular professional and non-professional staff of such institutions.[9] Neither the statutory language nor the legislative history of the 1966 amendments, however, makes any direct reference to the status of patient-workers in such institutions. This fact is a matter of major concern to the Court for there are significant questions of policy and practicality underlying extension of the Act to patient-workers.[10] Nevertheless, extensive review has convinced the Court that the Act does so apply and that Plaintiffs are entitled to summary judgment.

A basic cannon of statutory construction is that when statutory language is clear on its face and fairly susceptible of but * * * construction, that construction must be given to it.[11] Even where there is legislative history in point, albeit ambiguous or contradictory, it is unnecessary to refer to it and improper to allow such history to override the plain meaning of the statutory language.[12] Most certainly, then, the absence of any legislative history in point should not outweigh the words of the statute.[13]

The words of the statute here in question say simply that "employ" means "to suffer or permit to work",[14] that "employer" specifically includes "a hospital, institution, or school" [15] for the residential care of the mentally ill.[16] The terms of the Fair Labor Standards Act have traditionally been broadly construed [17] and the Congress is not only aware of but has approved of such broad construction.[18] Economic reality is the test of employment [19] and the reality is that many of the patient-workers perform work for which they are in no way handicapped and from which the institution derives full economic benefit.[20] So long as the institution derives any consequential economic benefit the economic reality test would indicate an employment relationship rather than mere therapeutic exercise. To hold otherwise would be to make therapy the sole justification for thousands of positions as dishwashers, kitchen helpers, messengers and the like.[21]

Further support for this approach can be found in the fact that the Act contains specific exemption provisions,[22] yet Congress did not see fit to specifically exclude patient-workers from coverage. The specific exemptions granted are numerous and detailed, indicating clearly that Congress is quite capable of specifically excluding from coverage some of those who might otherwise be covered by the general provisions. Congress did not exclude patient-workers from coverage and, therefore, the Court cannot do so.

A second well-established principle of statutory construction is that the interpretation of the agency charged with administering the statute is entitled to great weight.[23] This approach also supports extension of coverage, for the officially stated policy of the Department of Labor provides that patient-workers may be considered employees under the statute.[24] This constitutes an official administrative interpretation, still "not rescinded", that patient-workers as a class were included in the terms of the 1966 amendments extending coverage.[25] That the policy is not enforced has been ascribed throughout the development of the present case solely to administrative difficulties and "unresolved problems" in the mechanics of enforcement.[26] The Court has accorded substantial weight to the fact that the initial and consistent interpretation of those most closely concerned with administration and enforcement of the Act has been to recognize its applicability to patient-workers.

Lastly, there is available in Section 14 of the Act, 29 U.S.C. § 214, a procedure apparently well-suited for adaptation to enforcement activities applying the Act to the mentally ill. Basically, Section 14 establishes a procedure whereby less-than-normally productive handicapped (physically or mentally) workers can be certified as such by the Secretary of Labor and paid an appropriate competitive rate for their services. The legislative history of these provisions supports the proposition that productive labor of handicapped persons was generally intended by Congress to be covered by the Fair Labor Standards Act where the statutory prerequisites for coverage are otherwise met.[27] Initial application of the Section 14 procedures to patient-workers throughout the nation may consume some time and substantial administrative resources. Yet if that is a consequence of Congress action in extending coverage, administrative burden is no excuse for failure to implement the statutory mandate.

Plaintiffs have moved for certification of the case as a class action pursuant to Rule 23, Federal Rules of Civil Procedure. The Court finds that the prerequisites of Rule 23(a) have been met and that Defendants have acted or refused to act on grounds generally applicable to the class, Rule 23(b)(2), and the motion to certify the class will therefore be granted.[28] The class will be defined as follows: All patient-workers in non-Federal institutions for the residential care of the mentally ill and mentally retarded who meet the statutory definition of employee, 29 U.S.C. § 203(d)(e)(g).[29]

The Secretary will be ordered to implement reasonable enforcement efforts applying the minimum wage and overtime compensation provisions of the Fair Labor Standards Act to patient-workers at non-Federal institutions for the residential care of the mentally ill.

Counsel for the Plaintiffs are to submit appropriate Orders within ten (10) days of date.

AUBREY E. ROBINSON, Jr.,
Judge.

FOOTNOTES

[1] Defendants' Motion to Dismiss or, in the alternative, for Summary Judgment, was denied July 27, 1973. Defendants had contended that enforcement of the Fair Labor Standards Act is a matter entirely within the discretion of the Secretary of Labor and therefore not subject to judicial review. This position was rejected on the authority of Adams v. Richardson, 480 F. 2d 1159 (D.C. Cir. 1973) and Office Employees International Union v. N.L.R.B., 353 U.S. 313 (1957).

[2] Plaintiff Nelson Eugene Souder was, at the date this lawsuit was filed, a resident-worker at Orient State Institute, Orient, Ohio. Mr. Souder was released from Orient State Institute on convalescent leave status on March 24, 1973. Mr. Souder is 47 years old and mentally retarded. He has resided at Orient State Institute since 1940.

Plaintiff Joseph Lagnone is a 32 year old mentally-retarded resident-worker at Pennhurst State School and Hospital, Spring City, Pennsylvania, where he has resided since 1955.

Plaintiff Edwin Leedy is a 62 year old mentally ill resident-worker at Haverford State Hospital, Haverford, Pennsylvania, where he has been working since April 1966.

[3] The American Association on Mental Deficiency is a not-for-profit Pennsylvania Corporation headquartered in Washington, D.C. a national membership organization which includes institutional residents, parents and guardians of institutional residents, and over 9000 mental retardation professional workers.

[4] The National Association for Mental Health, is a not-for-profit New York Corporation, headquartered in Arlington, Virginia, a national citizens organization for the prevention of mental illness and promotion of mental health.

[5] AFSCME is an unincorporated voluntary association and labor union of more than 600,000 members which represents more than 125,000 workers in the health care field. AFSCME joins herein on behalf of its members employed in non-Federal institutions and as an organization concerned with improving health services.

[6] A Department of Labor policy statement, Release G–874 (Appendix A), was promulgated November 15, 1968, interpreting the Act as covering patient-workers in certain circumstances. The Department states that policy "has not been rescinded." (Answer #24, Defendants' Answers and Objections to Plaintiffs' Interrogatories, June 30, 1973). Nevertheless, "the Department of Labor, subsequent to the issuance of G–874, determined that it would *take no enforcement action* with respect to resident-workers because of the number of unresolved problems involved." (Id.) (emphasis added). See Department of Labor, Wage and Hour Division, Procedural Instruction, October 13, 1969 (Appendix B.)

[7] Adams v. Richardson, 480 F. 2d 1159 (D.C. Cir. 1973). Office Employees International Union v. N.L.R.B., 353 U.S. 313 (1957), Wisconsin v. F.P.C., 373 U.S. 294 (1963), Commonwealth of Pennsylvania v. Lynn—F. Supp. — (D.D.C., July 23, 1973), Pealo v. F.H.A., 361 F. Supp. 1320 (D.D.C. 1973). 29 U.S.C. §§ 202, 211, 212 and 216 and Section 602 of P.L. 89–601 are the statutory sources of the authority and duty of the Defendants to enforce the Fair Labor Standards Act, as amended. Compare, 42 U.S.C. § 2000d–1, the provision involved in Adams v. Richardson, supra. It should be noted that as state employees the individual Plaintiffs herein have no recourse to private lawsuits to enforce their rights under the Act, but must rely on Defendants for enforcement. See Employees of the Department of Public Health and Welfare of Missouri, et al. v. Department of Health and Welfare of Missouri, et al. 411 U.S. 279 (1973).

[8] P.L. 89–601, § 102, September 23, 1966, 80 Stat. 830–832. (Effective Feb. 1, 1967). See 29 U.S.C. § 203(d)(r) and (s).

[9] S. Rep. No. 1487, 89th Cong. 2d Sess. 1 (1966) at 8, 22–23; H. Rep. No. 1366, 89th Cong. 2d Sess. (1966) at 3, 11–12, 15, 16–17, and 18. See Employees of the Department of Public Health and Welfare of Missouri, et al. v. Department of Public Health and Welfare of Missouri, et al. 411 U.S. 279, 283 (1973).

[10] The questions of policy and practicality are intertwined, the most obvious being questions as to whether extension of cover-

age will in the long run be in the best interests of the patient-workers and the public. Significantly increased costs for the operation of institutions may result, but these, on the other hand, may be offset by increased or newly imposed charges on patients for their care. The possibilities and implications of such developments are at least areas in which the Court would have expected some legislative inquiry.

[11] Sea-Land Service, Inc. v. Federal Maritime Commission, 404 F. 2d 824 (D.C. Cir. 1968), District of Columbia National Bank v. District of Columbia, 348 F. 2d 804 (D.C. Cir. 1965), Arkansas Valley Industries, Inc. v. Freeman, 415 F. 2d 713 (8th Cir. 1969), United States v. New England Coal and Coke Co., 318 F. 2d 138 (1st Cir. 1963), Community Blood Bank of Kansas City Area, Inc. v. F.T.C., 405 F. 2d 1011 (8th Cir. 1969).

[12] Hamilton v. Rathbone, 175 U.S. 414, 421 (1899), United States v. First National Bank, 234 U.S. 245, 258 (1914), Osaka Shosen Kaisha Line v. United States, 300 U.S. 98, 101 (1937), Ex Parte Collett, 337 U.S. 55, 61 (1949), United States v. Oregon, 366 U.S. 643, 648 (1961), United States v. Dickerson, 310 U.S. 554, 562 (1940), N.L.R.B. v. Plasterers Union Local No. 79, 404 U.S. 116, 129 (1971).

[13] Eastern Air Lines, Inc. v. C.A.B., 354 F. 2d 507, 511 (D.C. Cir. 1965): "[I]t is no bar to interpreting a statute as applicable that the question which is raised on the statute never occurred to the legislature."

See Unexcelled Chemical Corp. v. United States, 345 U.S. 59, 64 (1953); National Association of Motor Bus Owners v. Brinegar, — F. 2d — (D.C. Cir. July 26, 1973) (Slip Opinion at 19).

[14] 29 U.S.C. § 203(g).

[15] 29 U.S.C. § 203(d).

[16] 29 U.S.C. § 203(r).

[17] See Gulf King Shrimp Co. v. Wirtz, 407 F.2d 508 (6th. Cir. 1969); Wirtz v. Allen Green Associates, Inc. 379 F.2d 198 (6th Cir 1966).

[18] See H. Rep. No. 1366, 89th Cong. 2d Sess. (1965) at 10.

[19] Goldberg v. Whitaker House Cooperative, Inc. 366 U.S. 28, 33 (1961).

[20] The Department of Labor does not take the position that all resident-workers at institutions are handicapped workers. Only where the patient's earning or productive capacity is impaired is the resident-worker considered handicapped and the institution allowed to reduce his compensation accordingly under Section 14 of the Act, 29 U.S.C. § 214. Answers Nos. 30, 33, Defendants Answers and Objections to Plaintiffs Interrogatories, June 20, 1973. This point is emphasized by the intervention of Plaintiff AFSCME on behalf of its members who perform non-professional staff work at various institutions. AFSCME contends that the use of unpaid and underpaid patient-workers constitutes the kind of unfair competition and lowering of standards that the Fair Labor Standards Act was designed to prevent.

[21] The fallacy of the argument that the work of patient-worker is therapeutic can be seen in extension to its logical extreme, for the work of most people, inside and out of institutions, is therapeutic in the sense that it provides a sense of accomplishment, something to occupy the time, and a means to earn one's way, but that can hardly mean that employers should pay workers less for what they produce for them.

[22] 29 U.S.C. § 203.

[23] Udall v. Tallman, 380 U.S. 1 (1965), Power Reactor Development Co. v. International Union of Elec., Radio and Mach. Workers, 367 U.S. 396 (1961), D.C. Federation of Civil Associations v. Volpe, 434 F. 2d 436 (D.C. Cir. 1970), National Automatic Laundry and Cleaning Council v. Shultz, 443 F. 2d 689 (D.C. Cir. 1971).

[24] Release G-874 (Appendix A) See footnote 6, supra.

[25] The policy statement, Release G-874, does not provide that all patient-workers are to be considered statutory employees, but would weigh the nature of the work performed by each worker and its possible therapeutic value. Thus, the Release recognizes that coverage under the Act is available for patient-workers and proceeds to the next question, whether an individual patient-worker meets the criterion of performing work of economic benefit to the institution sufficient to be considered an employee under the economic reality test. Thus Release G-874 seems at least a reasonable first-step toward defining an enforcement approach applying the statute to patient-workers. That administrative difficulties developed, however, is no excuse for totally abandoning any enforcement effort. See note 7, supra.

[26] See note 6, supra. Only in a supplementary memoranda of points and authorities on the question of coverage and the legislative history of the 1966 amendments, specifically requested by the Court, have the Defendants even hinted a dispute on the question of coverage. This of course is an after-the-fact legal argument rather than a contemporaneous administrative interpretation. Defendants nowhere in their Court pleadings expressly concede the question of coverage (but see Answer to Interrogatory #24, note 6, supra), but the issue is raised primarily at the instance of the Court because of its importance in the case.

[27] See 112 Cong. Rec. 20818–19 (1966), S. Rep. No. 1487, 89th Cong. 2d Sess. (1966), at 23–24; H.R. Conference Rep. No. 2004, 89th Cong., 2d. at 13–15, 20–22 (1966).

[28] See Bermudez v. United States Department of Agriculture, — F. 2d — (No. 72–2138, D.C. Cir. Oct. 10, 1973), Slip Opinion at 12–14.

[29] Defendants have opposed certification as a class action primarily on the grounds of difficulty in defining the class or identifying its members. Yet the statutory criteria for definition of an "employee" relationship are long-standing and have left a chain of well-known precedent applying the law to the facts of individual situations. See notes 17–21 and accompanying text, supra. Such application, indeed, is peculiarly the domain of Defendants herein. Defendants have not otherwise disputed the existence of a class, nor the propriety of injunctive relief. Thus the argument of administrative difficulty recurs. Yet in the context of this case the Court does not find this justification for denial of a class action once the criteria of Rule 23 are met. If unforseen or insoluble difficulties arise, any party may bring these to the attention of the Court in seeking clarification of the definition of the class. While Defendants correctly point out that the label "patient-worker" need not be controlling where a patient in fact does work that is solely therapeutic, the economic reality test is available to determine whether the institution receives any consequential economic benefit from the patient's services. That test would not seem overly difficult in its application.

APPENDIX A CA 482–73

[U.S. Department of Labor, Wage and Hour and Public Contracts Divisions]

APPLICABILITY OF THE FAIR LABOR STANDARDS TO WORK PROGRAMS FOR PATIENTS OF HOSPITALS AND INSTITUTIONS OTHER THAN FEDERAL

Coverage

The 1966 Amendments to the Fair Labor Standards Act, effective February 1, 1967, provided for application of the act to hospitals and institutions primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such hospitals or institutions (regardless of whether or not they are public or private or operated for profit or not for profit). Workshops and other types of work programs operated by hospitals and institutions are considered to be within the coverage of the act.

Employment of patients in work programs

Pending authoritative rulings of the courts, the Department of Labor will not assert that initial participation of patients in a work program constitutes an employment relationship if the following conditions are met.

1. The tasks performed by the patient are part of a program of activities which have been determined, as a matter of medical judgment, to have therapeutic or rehabilitative value in the treatment of the patient, and

2. The patient does not displace a regular employee or impair the employment opportunities of others by performing work which would otherwise be performed by regular employees who would be employed by the hospital or institution or an independent contractor, including, for example, employees of a contractor operating the food service facilities.

After placement in the workshop, on a job in the hospital or institution, or in another establishment, an employment relationship will ordinarily develop and the provisions of the Fair Labor Standards Act will become applicable. This shift to an employment relationship may come shortly after placement or it may occur later. As a general guide, work for a particular employer, whether the hospital, institution, or another establishment, after 3 months will be assumed by the Wage and Hour and Public Contracts Divisions to be part of an employment relationship unless the employer can show the contrary.

Where placements are made with successive employers for short periods of time, it is not expected in the ordinary course that such placements will be very long with a particular employer. As a general guide, work for successive employers for short periods of time after a total of 6 months will be answered by the Wage and Hour and Public Contracts Divisions to be part of an employment relationship unless it can be shown to the contrary. When the employment relationship has developed, the applicable statutory minimum must be paid except where special minimum wages below the statutory minimums are authorized by the Wage and Hour and Public Contracts Divisions.

Statutory Minimum Wages

The minimum wage is $1.60 an hour for employment subject to the act before the 1966 amendments. The minimum wage for employment made subject to the act by the 1966 amendments (which includes work in covered hospitals and institutions) is now $1.15 an hour, advancing to $1.30 on February 1, 1969, and except for employment in agriculture advancing to $1.45 on February 1, 1970, and to $1.60 on February 1, 1971.

Certificates Authorizing Rates Below the Statutory Minimum

The Wage and Hour and Public Contracts Divisions' regional and district offices may issue certificates authorizing special minimum wages below the statutory minimum under 29 CFR Part 524 and Part 525 for employment of handicapped workers in competitively employment and in sheltered workshops, respectively. Application forms and instructions for completion of such forms may be obtained from the regional or district office of the Wage and Hour and Public Contracts Divisions which serves the area in which the establishment or institution is located.

APPENDIX B

Defendants' Answer to Interrogatory No. 24 reads as follows: (filed herein June 20, 1973)

The policy expressed in Release G-874 has not been rescinded. But the Department of Labor, subsequent to the issuance of G-874, determined that it would take no enforcement action with respect to resident workers because of the number of unresolved problems involved. This determination was communicated to the regional offices of the Department's Wage and Hour Division by a procedural instruction dated October 13, 1969, which stated:

"Patients or inmates who may be employees. No action shall be taken to affirm or deny an employment relationship for patients or inmates of hospitals and related institutions who are in work programs of such institutions. Releases G-874 and G-876 provide general guidance as to determination of an employment relationship in these situations; however, experience has indicated a need for more precise guidance in such cases. Questions have also been raised about the application of section 3(m) to such persons. This entire matter is under review in the NO. Where this issue is encountered in an investigation, BW shall not be computed or reflected on Form WH-51. The facts shall be obtained and included in the investigation report. The establishment employer shall be advised that no decision has been made with respect to such cases and that he will be contacted later. All other aspects of the case shall be handled in accordance with regular procedures, including BW. When the investigation has been brought to a conclusion and closed, the report shall be sent to the AA for OCE to assist in working out an acceptable solution to the problem."

Inquiries or questions, either oral or written, received from institutions, residents, employees, or other interested parties after October 13, 1969, were answered by stating that the Department currently was taking no enforcement action under FLSA with respect to working patients. Generally the person making the inquiry was informed of the right of an employee to bring his own independent action under section 16(b) of the FLSA to recover back wages.

[In the U.S. District Court for the District of Columbia, Civil Action No. 482-73]

NELSON EUGENE SOUDER, ET AL., PLAINTIFFS, v. PETER J. BRENNAN, ET AL., DEFENDANTS

DECLARATORY JUDGMENT AND INJUNCTION ORDER

This cause came before this Court upon plaintiffs' motion for summary judgment and defendants' combined motion to dismiss and for summary judgment. Upon the entire record before this Court including the pleadings, interrogatories and affidavits, and upon the Memorandum Opinion of this Court dated November 14, 1973, it is hereby ORDERED that plaintiffs' motion for summary judgment is granted, and defendants' motions are denied. The Court having ruled that the Secretary of Labor has a duty to implement reasonable enforcement efforts applying the minimum wage and overtime compensation provisions of the Fair Labor Standards Act to patient-workers at non-Federal institutions for the residential care of the mentally ill and or mentally retarded, it is further ordered, adjudged and declared:

A. Notification to the class.—That the Secretary of Labor, his officers, agents, servants, and all persons acting or claiming to act in his behalf and interest [hereinafter, the "Secretary"], undertake the following notification activities:

(1) Within 120 days from the date of this Order, notify the Superintendent of each non-Federal facility for the residential care of the mentally ill and/or mentally retarded, and the chief executive officer or officers of the supervising state agency for mental health and/or mental retardation, that they have the same statutory responsibility to compensate patient-workers as non-patient workers, and that defendants intend to enforce the minimum wage and overtime compensation provisions of the Fair Labor Standards Act on behalf of patient-workers.

(2) Within 120 days from the date of this Order, inform the Superintendent of each non-Federal facility for the residential care of the mentally ill and/or mentally retarded, and the chief executive officer or officers of the supervising state agency for mental health and/or mental retardation of their obligation to maintain records of hours worked and other conditions of employment under 29 U.S.C. § 211(c) and 29 C.F.R. Part 516 for patient-workers, just as is required for non-patient employees at the same facilities.

(3) Within 120 days from the date of this Order, contact the Superintendent of each non-Federal facility for the residential care of the mentally ill and/or mentally retarded and request that he inform patient-workers at his facility of their rights under the Fair Labor Standards Act. Indications that proper attention has been given to informing the patient-workers of their rights will be:

a. That the Superintendent has notified *in writing* every resident and his guardian of his rights under the Fair Labor Standards Act, as declared in this decision;

b. That copies of such written notifications have been posed on every living unit of residential facilities for the mentally ill and/or mentally retarded;

c. That efforts have also been made to notify all residents *orally* of their rights—e.g., by holding group meetings for present residents and by establishing procedures under which each new resident will be notified of his rights within one week of his admission. In order to increase the chances that plaintiffs will fully comprehend such oral presentations, defendants may suggest to the Superintendents and to the chief executive officers of the supervising state agencies that representatives of concerned organizations be invited to observe and perhaps to participate at such meetings;

d. That non-patient employees of all non-Federal facilities for the residential care of the mentally ill and/or mentally retarded and their collective bargaining representatives or other representatives who deal with the employer on their behalf with respect to wages, hours, or other terms and conditions of employment, have been notified of this decision.

B. Reasonable enforcement activities.—Within one year from the date of this Order, defendants shall contact every institution to which the Order applies so as to establish and implement the necessary procedures [including any special certifications under 29 U.S.C. § 214] whereby every patient-worker in such institutions will be paid the wages due him. After the Department of Labor has made its initial efforts to aid the institutions in establishing their procedures for paying wages, it shall continue in the second year to give attention to investigation and enforcement of employment situations affecting the patient-workers. Thereafter, "reasonable" enforcement shall be defined to include those activities which are necessary to ensure the benefits of 29 U.S.C. §§ 206 and 207, to which patient-workers are entitled.

C. Implementation reports.—That the Secretary shall keep written records of his enforcement activities, which shall be available to the public through the Labor Department's Advisory Committee on Sheltered Workshops at six-month intervals. These reports should include a description of the activities taken to comply with the Order; the number of investigations of alleged violations of rights of patient-workers under the Fair Labor Standards Act (including a breakdown by type of establishment and number of workers involved at each such establishment), and the reason for such investigations; the results of each such investigation; and the disposition of each investigation confirming statutory violations, including lawsuits, settlements, and other enforcement activities.

E. Costs.—That Court costs be taxed to defendants.

AUBREY E. ROBINSON, JR.,
Judge.

[U.S. District Court for the District of Columbia, Civil Action No. 482-73]

NELSON EUGENE SOUDER, ET AL. VERSUS PETER J. BRENNAN, SECRETARY OF LABOR, ET AL.

ADDENDUM

Two errors in the original Memorandum filed herein November 14, 1973, having come to the attention of the Court, it is this 7th day of December, 1973,

Ordered, that the third paragraph of footnote two of said Memorandum be and hereby is amended to read as follows:

"Plaintiff Edwin Leedy died during the pendency of this action. He was a 62 year old mentally ill resident-worker at Haverford State Hospital, Haverford, Pennsylvania, were he worked from 1956 until his death in 1973."

And it is further ordered, that the last two sentences of footnote seven of said Memorandum be and hereby are amended to read as follows:

"It should be noted that as state employees the individual Plaintiffs herein have no recourse to private lawsuits in Federal Courts to enforce their rights under the Act, but must rely on Defendants for enforcement. See Employees of the Department of Public Health and Welfare of Missouri, et al. v. Department of Public Health and Welfare of Missouri, et al., 411 U.S. 279 (1973)."

AUBREY E. ROBINSON, JR.,
Judge.

Mr. WILLIAMS. Mr. President, S. 2747 is an attempt to address the problems of poverty through the dignity of the work ethic upon which Americans have traditionally placed a high value. This bill embodies that tradition.

Passage will represent a congressional determination that all who are willing and able to work should be governed by certain minimum standards, the very least of which ought to be a living wage.

Mr. President, on September 6, 1973, President Nixon vetoed the minimum wage bill passed by Congress before the August recess. In his veto message he raised a number of issues and focued in large measure on the provisions of the vetoed bill which would have raised the minimum wage to $2 an hour on the effective date and $2.20 an hour 8 months later. He noted that "thus, in less than a year, employers would be faced with a 37.5 percent increase in the minimum wage rate." The President expressed concern about the impact of what he referred to as "sharp and dramatic increases" upon the employment opportunities of marginal workers and also concluded that those increases would result in "a fresh surge of inflation".

In reintroducing the pending minimum wage legislation on November 27, 1973, as I indicated at that time, I made one major change in the legislative proposal. Specifically, that proposal deferred the effective date of the increase to $2.20 an hour by 4 months so that it will become effective 1 year after the effective date of the increase to $2 an hour. Estimates based on Department of Labor statistics are that this one change reduces the economic impact of this

legislation by over a half billion dollars. This change was made in the spirit of accommodation despite the fact that we all must recognize that $2.20 an hour is needed right now to make up for the incredible cost-of-living increase since we last legislated a minimum wage increase in 1966.

I was, therefore, encouraged by a letter I received yesterday from the President regarding the pending minimum wage legislation. I ask unanimous consent that this letter be printed in the RECORD at this point in my remarks. Although I sharply disagree with the points raised by the President in his letter and I hope that the Senate will enact S. 2747 in the form reported by the Committee on Labor and Public Welfare. I am encouraged by what appears to be a more conciliatory tone by the administration.

There may be those who would hope that the committee, and the floor manager particularly, would accept the President's offer and adopt it as a way of disposing of this legislative matter which has been before the Congress for 3 years now, once and for all. I cannot, in good conscience, do that. I think we must all reflect on the fact that the committee reported bill, which when first introduced in 1969 would have restored minimum wage workers to a wage rate above the poverty level and would have restored the purchasing power of their minimum wage dollar, is at best in 1974 a bill which makes up only in part for the deterioration brought about by the 42-percent increase in the cost of living since 1966. Under the President's proposal, minimum wage workers would receive $2.30 an hour no earlier than January 1, 1976.

Mr. President, that minimum wage worker needed $2.28 an hour 2 months ago, not 2½ years from now, merely to compensate for increases in the Consumer Price Index since we last legislated a minimum wage increase.

I hope the Senate will pass S. 2747 with dispatch and that the House will soon consider the bill being marked up by the Committee on Education and Labor so that a conference can produce a legislative vehicle for submission to the White House in the very near future. Of course, I hope that the President will sign that legislation.

Mr. President, I ask unanimous consent to have the President's letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, February 27, 1974.

Hon. HARRISON WILLIAMS,
U.S. Senate,
Washington, D.C.

DEAR HARRISON: I am writing to you with regard to the need for enacting a responsible minimum wage bill during this session of the Congress.

The minimum wage for most workers has now been at the same level for six years, and there can be no doubt that it should be higher. I have consistently urged appropriate increases, starting with legislative recommendations in 1971 and most recently in my State of the Union message last month. Yet, in amending the minimum wage, we must avoid hurting the many low wage workers we are trying to help. This was my concern when I vetoed H.R. 7935 last fall.

Last week, Committees of both Houses of Congress began work on new minimum wage legislation. In the House, the initial actions showed a desire to phase in increases in the minimum wage in a way which should reduce the inflationary and disemployment impact that last year's bill would have had. I am particularly encouraged by the House Sub-committee action in making some changes to help expand student employment opportunities.

There is one area of new coverage which is of special concern to me. The disemployment effects on domestic workers could be very acute if there are no practical limits on coverage and their minimum wage is put at too high a level. The adoption of a meaningful hours-worked test, especially when coupled with a delay in the increase in subsequent steps of the minimum wage, would help to ameliorate the disemployment effects that would result from covering domestic workers. However, the initial tests proposed in the House and Senate bills are so broad that they may not have their intended effect.

The extension of the Federal minimum wage and overtime requirements to State and local Government employees is also a problem. I appreciate the fact that the House bill under consideration tries to avoid undue interference in the operations of these Governments by exempting police and firemen from the overtime requirements. However, I continue to agree with the Advisory Commission on Intergovernmental Relations that, in general, additional Federal requirements affecting the relationship between these governments and their employees is an unnecessary interference with their prerogatives. The available evidence has failed to convince me that these governments are not acting responsibly in setting their wage and salary rates to meet local conditions. Additionally, if the Congress desires to make the minimum wage and overtime laws applicable to Federal employees, who are already adequately protected by other laws, it should place enforcement responsibility in the Civil Service Commission, which has the responsibility under the other laws.

The high rate of unemployment among youth, and the related difficulty of too few work and training opportunities remain difficult problems. They will be aggravated by the temporary increase in unemployment resulting from the energy shortage. Within the Administration we are considering a range of proposals within the broad authorities existing in several agencies to enhance both training and work opportunities for youth. Nevertheless, I believe the most important means for preservation and expansion of work and training opportunities for young people would be the special youth differential in the minimum wage which we first proposed in May of 1971.

With a view toward additional ways to aid youth, I note that the House has shown its concern by changing the tests for special minimum wage certificates for part-time work by full-time students. This, however, does nothing for the young person no longer going to school who perhaps needs even greater help toward meaningful participation in the work force.

While I am prepared to accept a minimum wage bill that contains responsible provisions for the adult population, I believe it should be clear that such a bill, without any youth differential provision, is a vote for higher youth unemployment. Therefore I shall continue to urge the enactment of a meaningful youth differential provision in legislative action this year.

With every good wish,
Sincerely,

RICHARD NIXON.

Mr. WILLIAMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FAIR LABOR STANDARDS ACT AMENDMENTS WOULD BROADEN AGE DISCRIMINATION IN EMPLOYMENT ACT

Mr. CHURCH. Mr. President, as chairman of the Special Committee on Aging, I would like to point out that the Fair Labor Standards Act amendments, which we are considering today, also include much needed improvements to the Age Discrimination in Employment Act. Section 28 of S. 2747 provides for first, expanding the coverage to include employers with 20 or more employees, instead of 25 as under the present law; second, extending the protection of the act to Federal, State, and local government employees; third, increasing the authorization of funding from $3 million to $5 million because of the broadened coverage of the act.

The Age Discrimination in Employment Act amendments which the Committee on Labor and Public Welfare have incorporated in S. 2747 are those which I introduced in S. 1810 last May and which passed the Senate as a part of the Fair Labor Standards Act amendments last session. Unfortunately, they were deleted in conference because of the House germaneness rule. This session the House is expected to include the age discrimination amendments in its companion legislation.

The extension of the coverage of Age Discrimination in Employment Act to Federal, State, and local employees is a significant and needed expansion of coverage. As the report from the Committee on Labor and Public Welfare states:

> The Committee recognizes that the omission of government workers from the Age Discrimination in Employment Act did not represent a conscious decision by the Congress to limit the ADEA to employment in the private sector. It reflects the fact, that in 1967, when ADEA was enacted, most government employees were outside the scope of the FLSA and the Wage Hour and Public Contracts Divisions of the Department of Labor, which enforces the Fair Labor Standards Act, and which were assigned responsibility for enforcing the Age Discrimination in Employment Act.

Fair Labor Standards Act coverage has since been extended to Government workers and it is only logical, the committee points out, to extend Age Discrimination in Employment Act coverage.

In the case of Federal Government workers, the Civil Service Commission will have responsibility for enforcing the age discrimination provisions and aggrieved employees may institute civil court actions. This is vitally important because the Committee on Aging has received ample evidence that age discrimination can flourish in the Federal Government despite the existence of a policy against age discrimination. The report

prepared for the committee on canceled careers in 1972 found that older employees had been singled out in some agencies for an early exit from their Government jobs.

The most recent evidence to surface is the report that the Pentagon is seeking authority to force certain personnel in responsible positions to retire at age 55. Justification for such authority is made in terms of the "worsening" manpower problems of an aging work force.

Agism is thus not limited to private industry, and I am very pleased that the committee has included my proposal for coverage of all Government workers in the amendments and thus closed an important gap in coverage.

We must continue to reduce barriers to employment of older persons and to resist pressures to usher workers out of the labor force while they are still able to work and before they can afford retirement. Living on a fixed income was never easy. And in these inflationary times it is harder than ever. Almost before a social security increase can go into effect, it is wiped out by increases in living costs. Income from earnings is still the best way to maintain a decent standard of living for older people as well as for younger people.

The Age Discrimination in Employment Act protects the rights of middle-aged and older workers to work-income, and I urge the adoption of these amendments which would extend this protection to Government workers as well as private employees.

Mr. JAVITS. Mr. President, I think that the most eloquent summary of what we are doing in respect of this bill is found in the letter of the President addressed to me and to other Senators and Congressmen who are concerned with the minimum wage. In his letter yesterday the President said, and I wish to read one sentence:

> The minimum wage for most workers has now been at the same level for 6 years and there can be no doubt it should be higher.

I think that is about it. I think that is true by any calculation; for instance, in order to make up for cost-of-living increases since February 1, 1968, employees who were covered pre-1966, the basic group covered by minimum wage, should at this stage be receiving $2.17 an hour. That is strictly applying the cost-of-living test. It seems to me that under these circumstances, when we are dealing with the law that would give these same workers a minimum wage of $2 upon enactment and $2.20 1 year after enactment, that we certainly are being extremely conservative, especially with the anticipated inflationary factor of 7-percent-plus this year, anticipated by the Council of Economic Advisers and the financial authorities of our Government.

What has held up this matter? Part of the delay has been a Presidential veto. What held it up has been a practically deadlocked situation respecting treatment of youth, with the President saying, and I refer to his letter, that it is of great concern to him that there should be an adequate youth differential to enhance both the training and work opportunities for youth.

I have contended constantly and I have yet to hear a substantive argument to the contrary, that the existing provisions of the Fair Labor Standards Act; namely, section 14(a) in respect of giving the Secretary sufficient latitude with respect to what is needed in the way of a minimum wage differential for appropriate training purposes, enable younger people to learn a job. If on the other hand, what is implied is an absolute differential because they are youth, without a performance standard or without status, such as students, justifying it, then the AFL–CIO is correct that the only purpose of it is to get a discount on the minimum wage for employing youths.

Under section 14(a) special minimum wage rates can be established for ill "learners" and "apprentices" provided, of course, appropriate safeguards are observed to insure that the training program is not merely a subterfuge to replace adults with "trainees" at subminimum rates. A formal apprenticeship program is not required and the Secretary, in determining who is a "learner," will obviously apply all of the experience and knowledge as to the needs of workers gained under the various manpower training programs administered by the Department of Labor.

We went even further than that in respect to the bill before us now, in the area of certificates for full-time students, up to four, where we practically have taken off every restriction. There used to be a test that the particular employer was employing about the same number of full-time students that he had historically. But we have taken off the test with respect to the first four, and that should satisfy any requirements so far as student employment is concerned. In short, I believe we have dealt with the youth employment factor in the most accommodating way. There is no reason why this should deadlock the bill any further.

I am very hopeful that this time out we shall strive to give the President a reasonable bill; that this time out the President will sign the bill we send to him; and that is intimated from the last paragraph of the President's letter in which he said:

> I am prepared to accept a minimum wage bill that contains responsible provisions for the adult population. . . ."

This bill certainly contains provisions for the adult population. It should not be held up any further in any way.

Mr. President, the Senate bill which passed last year was a more liberal bill than the bill which emerged from conference. There were many changes made with respect to the treatment of employees working overtime, and various exemptions of all kinds which were dealt with.

Personally, I yielded a great deal in agreeing to certain provisions in regard to child labor when the Senate bill absolutely eliminated child labor on the farm, as it should have; child labor in the industrial field having been prohibited 36 years ago. The conference bill, as well as the bill now before us, eliminates child labor on covered farms only.

So the President would be getting a bill that came out of conference which was fully agreed to and which represented a considerable step-down from the Senate bill. The present bill makes two changes in the conference bill: one, that the effective date of the second increase for pre-1966 employees would take effect 1 year after enactment instead of a fixed date after enactment, which is the way it was before; and second, there should be no discrimination against Government employees at any level, State, local, or Federal, on account of age.

Other than that, in this bill, which the Senate is asked to pass, he gets exactly the deal which conferees between the House and the Senate agreed to in what was extremely tough bargaining. I know because I was a conferee.

Now, just a few other observations. I mentioned the question of child labor and pointed out that child labor was absolutely eliminated in last years Senate bill, as it should have been. When we conferred with the House there was quite a tangle on the subject, which took us a very considerable time to resolve, and finally we worked out a solution as follows:

On covered farms agricultural child labor under 12 years of age is forbidden; between 12 and 14 permitted with parental consent; and between 12 and 16 years of age that they may work only when the local school district is not in session.

Then, we sent further in that regard and adopted the concept of serious penalties if this were violated, with civil penalties up to $1,000 for each violation. This, of course, applied to what are covered farms; that is, farms meeting the 500 man-day requirement.

Mr. President, I realize the concerns which many persons have about the fact that we are in an inflationary period—and we are in an inflationary period, a very serious one—but no American is denying contributions to the Red Cross or to the Community Chest or to any other aspect of civil life which represents the humanity of man to man, which is the true ornament of our system. I deeply believe, and I again invoke the President's words, that we have stayed at this level for 6 years, and I deeply believe that this is the kind of law that represents an element of humanity and justice, man to man.

It really is so unjust under present conditions that, as I believe the President has done, we simply have to subordinate our pet ideas in order to arrive at a bill. I gave an example of it in the case of agricultural child labor, which was a hard compromise for me to make, as can be understood, for I stood alone for years in an effort to eliminate child labor from all farms as it had been eliminated from industrial plants. It was a very hard one for me to do, but I did it because it would be meaningless to be so inflexible that we did not get any of it in order to eliminate a good bit of it. So I finally came to a compromise which eliminated it on

covered farms only. That, in itself, is a historic breakthrough.

Two other matters which I would like to refer to are the inclusion in the bill of domestics and the other inclusion, which has raised so many problems, regarding governmental employees.

First as to domestics, all of us have had experience with domestics. Nobody expects agents of the Department of Labor to go knocking on housewives' doors to investigate whether they are paying the minimum wage under the law. It is the kind of situation where dependence will have to be placed upon voluntary compliance and complaints in order to enforce the law. Indeed, hopefully, people will be encouraged and emboldened to complain, because there are a good many people who employ household help—what we call domestics in this bill—who simply have no concept of the fact that peonage and the servant culture are simply un-American and against the grain of anything that we believe in.

The dignity to which the domestic employee is entitled has now been locked in with social security, which is a tremendous blessing to every one of them, including those which my wife and I and others of us have employed for years.

It simply is beyond me why we should omit them from the minimum wage, when they are really performing a service, instead of representing any relationship of master and slave, which is truly archaic in the modern day.

We certainly have cut down those who are covered to really those who make it a regular part of their occupation, and we have exempted live-in domestics from overtime, thus understanding the practicability of homes and those who live in them and render these household services in them. As a matter of dignity as well as decency, they ought to be included. It is one of the finest parts of the bill that they are included.

Then, too, the inclusion of State and local government employees simply recognizes the fact that governments ought to meet the same standards imposed on private employers. In the case of people who work for any government entity, there is no competition. That is the only employer there is. So, all the more reason for requiring minimum standards.

We have taken care of all security forces by phasing in overtime over a period of years, and including averaging provisions on overtime on a 4-week basis, thereby answering the argument of those who would say that for security forces it is completely impracticable to have an overtime provision.

Mr. President, we are very resentful, very unhappy, when workers in the public domain threaten to strike. This is inevitably the result of the deep feeling that economic justice cannot otherwise be obtained, and I respectfully submit that we will go a lot further in getting tranquility in the labor field by giving them a minimum wage status and an overtime status than in almost any other way I can think of, and prevent the feeling on their part that the only way one can get justice is by rule of the jungle, to wit, by strike and ceasing essential public service.

So I hope, for all the reasons I have stated, that the Senate will be able to approve this bill and that we will get it on its way and, with the new attitude of the President, very hopefully we will give him a measure that he not only can but will find to be one which can have the approval which, in my judgment, is so clearly indicated.

I yield the floor.

Mr. TAFT. Mr. President, amendments to the Fair Labor Standards Act were last enacted in 1966 and I believe there is a need for a constructive increase in the minimum wage such as contained in the substitute amendment being offered by Senators DOMINICK, BEALL, and myself. Unfortunately, after 3 years of congressional consideration, no constructive amendments to the act have become law. The bill reported out by the committee is essentially identical to the bill vetoed by the President in the summer of 1973, and the reasons for rejecting the bill last session are equally as compelling in certain areas for S. 2747.

The committee heard no witnesses and had before it little or no current data upon which to assess the effects on the economy of the actions it took, especially with regard to exemptions and extensions of coverage. The failure of the committee to include new initiatives to reduce youth unemployment is also extremely disappointing.

As we stated in the minority views to the committee proposal this year, S. 2747, and the Senate bill that was rejected last year, S. 1861, many difficulties appear in the approach the Senate Labor and Public Welfare Committee has taken on this issue.

For example, the committee has either repealed or modified a great number of current exemptions in the act with little or no economic criteria before the committee. In fact, no hearings whatsoever were held on S. 2747 before it was reported by the committee. The potential adverse economic effect resulting from repeal or modification of these exemptions to certain segments of the economy, especially small businesse, is significant and in certain cases the committee's action may mean economic fatality for many thousands of their employees. For example, S. 2747 would repeal or severely modify current exemptions in the Fair Labor Standards Act for the following areas and occupational categories: retail and service establishments grossing less than $250,000 annually—complete repeal of minimum wage and overtime exemption—tobacco employees; nursing home employees; hotel, motel and restaurant employees; salesmen, partsmen and mechanics; food service establishment employees; seasonal industry employees; cotton ginning and sugar processing employees; and, local transport employees.

At the very least, action should not be taken in these areas until sufficient current facts are before the committee to permit each exemption to be considered on its own merit.

Equally as distressing is that S. 2747 is deficient with regard to new initiatives to increase employment opportunities for youth. As an example of this acute problem, the national unemployment rate as of January 1974 for Caucasians 16 and 17 years of age was 16.8 percent and for non-Caucasians 16 and 17 years of age, the rate was a towering 38.9 percent. These statistics underscore the need for implementation of a national program of specialized wage structures for youth similar to proposals I have advocated with many of my colleagues during prior consideration on this issue. Such a national initiative would constructively supplement the broad authority the Secretary of Labor currently has available under section 14 of the act with regard to adoption of special wage structures for youth employment and training.

Domestic service employees would be covered for the first time under the bill as reported by the committee with a wage scale for such employees the same as that established for those who have been under coverage for some time. While I share the concern the committee has expressed for the economic advancement for individuals in this occupational category, I believe such an extension of coverage under the act will further complicate tax and reporting problems and create further unemployment. Certainly a more practical approach than covering all such employees who earn more than $50 in a calendar quarter—committee incorporation of section 209(g) of the Social Security Act—can be found to reflect the committee's concern in this area.

I believe Congress should expeditiously enact constructive increases in the minimum wage to help compensate for the eroded purchasing power of our lowest paid workers. The longer a minimum wage increase is postponed, the greater the pressure will be for excessive increases over too short a period of time, thus maximizing the inflationary and disemployment effects on the economy. To continue to hold a wage rate increase hostage to unrelated political issues only penalizes our Nation's lowest paid workers. Therefore, I am hopeful the Senate will adopt constructive changes in the committee bill to permit amendments to the Fair Labor Standards Act to become a reality during this session of Congress.

Mr. President, I have a number of amendments which I shall send to the desk and ask to have printed. I also have statements with regard to those amendments.

Mr. President, the Senator from Colorado is on one of the amendments. One of the amendments I intend to offer at this time is an amendment sponsored primarily by the Senator from Colorado. I have made mention of the amendment. If the Senator from Colorado wishes to offer it on his own behalf, I will withdraw my sending of the amendment to the desk.

Mr. DOMINICK. The Senator can go right ahead as long as my name is on it.

Mr. TAFT. Mr. President, I send these amendments to the desk.

The PRESIDING OFFICER. The amendments will be received and printed, and will lie on the table.

AMENDMENT NO. 951

(Ordered to be printed, and to lie on the table.)

Mr. TAFT. Mr. President, I send to the desk a substitute amendment to be offered by Senator DOMINICK with cosponsorship of myself and Senator BEALL to S. 2747. This substitute amendment addresses itself only to the minimum wage issue and would establish a $2.30 minimum for both nonagriculture and agriculture employees covered by the Fair Labor Standards Act over a series of steps.

A constructive minimum wage increase is needed now, and agreement as to the amount of such an increase appears to be achievable relatively quickly. The major minimum wage proposals this year do not differ substantially with regard to wage rates. On the other hand, a compromise agreement resolving the more controversial issues which have caused the present impasse—extensions of coverage, repeal of exemptions, and a youth subminimum rate—appear to be much more difficult.

The controversial and complex proposals which are unrelated to wage rates should be required to stand or fall on their own merits. To continue to hold a wage increase hostage to them only penalizes our lowest-paid workers.

I ask unanimous consent that the amendment be printed in its entirety in the RECORD and a comparison between the Dominick-Beall substitute amendment; the committee bill, S. 2747; the pending House bill, H.R. 12435; the vetoed bill of last year, H.R. 7935, and current law, also be printed in the RECORD.

There being no objection, the amendment and material were ordered to be printed in the RECORD, as follows:

AMENDMENT No. 981

Strike out all after the enacting clause and insert in lieu thereof the following:
That this Act may be cited as the "Fair Labor Standards Amendments of 1974".

INCREASE IN THE MINIMUM WAGE

SEC. 2. (a) Section 6(a)(1) of the Fair Labor Standards Act of 1938 is amended to read as follows:

"(1)(A) Not less than $2 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1974,

"(B) Not less than $2.10 an hour during the second year from the effective date of such amendments,

"(C) Not less than $2.20 an hour during the third year from the effective date of such amendments,

"(D) Not less than $2.30 an hour thereafter.".

(b) Section 6(a)(5) of such Act is amended to read as follows:

"(5) if such employee is employed in agriculture, not less than $1.60 an hour during the first year from the effective date of the Fair Labor Standards Amednments of 1974, not less than $1.80 an hour during the second year from the effective date of such amendments, not less than $2.00 an hour during the third year from the effective date of such amendments, not less than $2.20 an hour during the fourth year from the effective date of such amendments, and not less that $2.30 an hour thereafter.".

(c) Section 6(b) of such Act is amended—

(1) by inserting after the words "Fair Labor Standards Amendments of 1966" a comma and the following: "or title IX of the Education Amendments of 1972"; and

(2) by striking out paragraphs (1) through (5) of such section and inserting in lieu thereof the following:

"(1) not less than $1.80 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1974;

"(2) not less than $2.00 an hour during the second year from the effective date of such amendments;

"(3) not less than $2.20 an hour during the third year of such amendments; and

"(4) not less than $2.30 an hour thereafter.".

TECHNICAL AMENDMENTS

SEC. 5. (a) Section 6(c)(2)(C) of the Fair Labor Standards Act of 1938 is amended by substituting "1974" for "1966" each time it appears in such paragraph.

(b)(1) Section 6(c)(3) of such Act is repealed.

(2) Section 6(c)(4) of such Act is redesignated as section 6(c)(3).

EFFECTIVE DATE

SEC. 6. The amendments made by this Act shall take effect on the first day of the second full month which begins after the date of the enactment of this Act.

COMPARISON OF PRESENT LAW, VETOED BILL (H.R. 7935), HOUSE EDUCATION AND LABOR BILL (H.R. 12435), S. 2747, AND PROPOSED TAFT, DOMINICK, BEALL SUBSTITUTE AMENDMENT

Employee categories	Present law	Vetoed bill (H.R. 7935)	House Education and Labor bill (H.R. 12435)	S. 2747	Taft, Dominick, Beall Substitute
Pre-1966	$1.60	$2, period ending June 30, 1974 $2.20 after June 30, 1974 (Note: effective date—1st day of 2d full month.)	$2, period ending Dec. 31, 1974 $2.10, year beginning Jan. 1, 1974 $2.30 after Dec. 31, 1975 (Note: effective date—1st day of 2d full month.)	$2 an hour on effective 1974 date $2.20 thereafter, 1975	$2, 1974. $2.10, 1975. $2.20, 1976. $2.30, 1977.
Post-1966	1.60	$1.80, period ending June 30, 1974. $2, year beginning July 1, 1974. $2.20 after June 30, 1975.	$1.90, period ending Dec. 31, 1974. $2, year beginning Jan. 1, 1975. $2.20, year beginning Jan. 1, 1976. $2.30 after Dec. 31, 1976 (exception in domestic service).	$1.80 an hour on effective 1974 date. $2 a year thereafter, 1975. $2.20 2 years thereafter, 1976.	$1.80, 1974. $2, 1975. $2.20, 1976. $2.30, 1977.
Agriculture	1.30	$1.60, period ending June 30, 1974. $1.80, year beginning July 1, 1974. $2, year beginning July 1, 1975. $2.20 after July 1, 1975.	$1.60, period ending Dec. 31, 1974. $1.80, year beginning Jan. 1, 1975. $2, year beginning Jan. 1, 1976 $2.20, year beginning Jan. 1, 1977. $2.30 after Dec. 31, 1977.	$1.60, 1974. $1.80, 1975. $2, 1976. $2.20, 1977.	$1.60, 1974. $1.80, 1975. $2, 1976. $2.20, 1977. $2.30, 1978.

AMENDMENTS NOS. 982, 983, AND 984

(Ordered to be printed, and to lie on the table.)

Mr. TAFT. Mr. President, I plan to offer amendments to S. 2747 when it is considered next week.

The amendments I plan to offer in addition to supporting the amendments to be offered by the senior Senator from Colorado (Mr. DOMINICK) include the following:

ECONOMIC STUDY AMENDMENT

This amendment would mandate the Department of Labor, the Department of Commerce, and the Council of Economic Advisers to study the economic impact of any proposed changes in the Fair Labor Standards Act. Such information would be required to be supplied to the Congress and to the pertinent congressional committees before any action could be taken on such proposals. This approach I believe would permit the Congress to better evaluate the potential affects of any actions in this area on the economy as a whole, or occupational categories within the economy.

DEPRESSED EMPLOYMENT CATEGORIES STUDY

This amendment would require the Department of Labor, the Department of Commerce, and the Council of Economic Advisers to periodically report to the Congress regarding methods to reduce unemployment among selected occupational and age categories. This approach is especially desirable to combat the extremely high rate of youth unemployment and would supplement the already broad authority the Department of Labor has under section 14 of the Fair Labor Standards Act.

LIQUIDATED DAMAGES

The proposed amendment would strike the provision of S. 2747 permitting the Secretary of Labor to recover liquidated damages under the act. There is no rationale for this inclusion of this new authority and the background of this issue can be better explained by the legal memorandum, which I ask unanimous consent to have printed in the RECORD, with the text of the amendments.

There being no objection, the amendments and memorandum were ordered to be printed in the RECORD, as follows:

AMENDMENT No. 982

On page 46, line 11, beginning with the word "The" strike out through the period in line 17 and insert in lieu thereof the following: "The Secretary of Labor, the Secretary of Commerce, and the Council of Economic Advisers shall each conduct studies on the economic effect of amendments to this Act which increase coverage of workers, modify or repeal exemptions, or increase the minimum wage. Such studies shall be forwarded to the Congress before any change in the Fair Labor Standards Act is adopted.

AMENDMENT No. 983

On page 46, line 10, strike the word "paragraph" and insert in lieu thereof "paragraphs".

On page 46, line 20, strike the end quotation marks.

On page 46, insert between lines 20 and 21 the following:

"'(3) The Secretary of Labor, the Secretary of Commerce, and the Council of Economic Advisers shall each conduct a study on means to prevent curtailment of employment opportunities among manpower groups which have had historically high incidents of unemployment, such as disadvantaged minorities, youth, elderly, and such other groups the Secretary may designate.' Such studies shall include suggestions under the broad authority that the Secretary of Labor has available under Sec. 14 of the Fair Labor Standards Act and shall be transmitted to the Congress at two year intervals after the effective date of these amendments."

AMENDMENT NO. 984

On page 45, beginning on line 2, strike out all through line 2, page 46 and insert in lieu thereof the following:

"SEC. 26. The first three sentences of section 16(c) are amended to read as follows: 'The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under sections 6 or 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of the unpaid minimum wages or overtime compensation. The right provided by subsection (b) to bring an action by or on behalf of any employee and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 6 and 7 provided by this subsection owing to such employee by an employer liable under the provision of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary.'"

MEMORANDUM ON LIQUIDATED DAMAGES

PRESENT LAW

(a) The present Fair Labor Standards Act ("FLSA"), Section 16(b), permits an employee, for himself and others similarly situated, to bring suit against an employer for unpaid minimum wages and overtime compensation and for an additional amount as liquidated damages. The liquidated damages proviso was to permit the employee to be compensated for his time and effort in establishing his case and not as a penalty for the employer.

(b) Section 16(c) of the present Fair Labor Standards Act permits the Secretary to bring suit on behalf of employees against the employer for unpaid minimum wages and overtime compensation. There is no provision for recovery of liquidated damages when the Secretary brings suit. The Secretary has a staff for making investigations and preparing for a lawsuit, for which activities provision is made in the Government's budget.

(c) If a violation is found to be "wilful", the employer is liable for back wages for a period of three years; otherwise, the period is two years (Section 6 of the Portal to Portal Act). "Wilful" has been interpreted by the courts to mean an awareness of the existence of the FLSA. *Brennan v. J. M. Fields, Inc.*, 488 F2d 443, 72 L.C. Para. 32993 (5 Cir. 1974). *Coleman v. Jiffy June Farms, Inc.*, 458 F2d 1139 (5 Cir. 1972). The Department of Labor in essence is asserting that all equal pay violations are "wilful" and hence liability for three years exists.

(d) Section 11 of the Portal to Portal Act provides that a court may award no liquidated damages or an amount less than full allowable amount if the employer shows to the court it acted in good faith and on reasonable grounds. The interpretations by the courts and the Secretary of Labor (29 CFR Part 790) state questions of good faith are mixed questions of law and facts to be determined by objective tests, but these tests are not spelled out.

(e) Under Section 16(b) of the FLSA, the employee may recover his attorneys' fees and costs.

PROPOSED 1974 AMENDMENT TO FLSA

The proposed amendment in S. 2747 to Section 16(c) of the Act permits the Secretary to recover liquidated damages in an amount equal to unpaid minimum wages or overtime compensation. However, under Section 11 of the Portal to Portal Act, the court may award no liquidated damages or less than the full allowable amount if the employer can show he acted in good faith and had reasonable grounds for believing that his act or omission was not a violation of the Act, even though such act or omission could be defined as "wilful" for purposes of the Statute of Limitations in Section 6 of the Portal to Portal Act.

PRESENT ENFORCEMENT PRACTICES

(a) The courts and the Department of Labor in equal pay litigation arising under Section 6(d) of the FLSA have taken the position that equal pay violations are wilful for purposes of Section 6 of the Portal to Portal Act.

(b) An act or omission to act may be wilful for purposes of the Statute of Limitations under Section 6 because of awareness of existence of the FLSA. However, for purposes of Section 11 of the Portal to Portal Act, an act committed in good faith may yet be wilful. *Coleman v. Jiffy June Farms, Inc.*, 458 F2d 1130 (1972); *Brennan v. J. M. Fields, Inc.*, 483 F2d 443, 72 L.C. 32993 (1973).

Where, for example, courts have arrived at differing results for comparable fact situations in the application of the equal pay provisions, an employer relying upon counsel's opinion would be deemed acting in good faith and upon reasonable grounds. However, a court could ultimately decide the act was a wilful violation for Section 6, but was done in good faith for Section 11. No court has specifically made this point.

CONCLUSION

(a) It is not necessary to give the Secretary the additional leverage of liquidated damages to force settlement for claims of back pay under FLSA. For fiscal 1973 enforcement of FLSA by the Secretary resulted in over $40,000,000 in payment of back wages to almost 200,000 workers.

(b) The purpose of the liquidated damages proviso in Section 13(b) was to compensate the employee for his efforts and expenses of investigation. This is not needed by the Secretary.

(c) The good faith defense provision in Section 11 of the Portal to Portal Act may not be sufficient protection on which an employer may rely in a questionable case; especially due to conflicting interpretations of sections of the Act.

AMENDMENT NO. 985

(Ordered to be printed, and to lie on the table.)

EXPLANATION OF TAFT AMENDMENT ON WAGE COMMISSION

Mr. TAFT. Mr. President, the Federal Salary Act of 1967 provides that a Wage Commission have jurisdiction over all Federal salaries, including those of Members of Congress.

This amendment would remove the Commission's authority over congressional salaries.

The Senate Post Office and Civil Service Committee has already expressed its view by reporting legislation which eliminates the pay raise given to Members of Congress by the President's proposal. I believe that congressional salaries have been hidden in other legislation too long, and when we feel we need a raise, or deserve a raise, it should be debated openly, as any other legislation, not resolved in a closed committee room. The public is entitled to know our expenses, and the state of our finances. If we are feeling the pinch of inflation, the public is entitled to know that, too. Perhaps if all the facts were bared, congressional salary increases would not have to be passed up out of fear, and could be legislated when necessary, based on the cost of living.

I ask unanimous consent that the text of the amendment be printed in the RECORD. I also have offered this amendment as a separate bill.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 985

On page 1, between lines 2 and 3, insert the following:

"TITLE I—FAIR LABOR STANDARDS AMENDMENT"

On page 1, line 4, strike out the word "Act" and insert in lieu thereof the word "title".

On page 1, line 7, strike out the word "Act" and insert in lieu thereof the word "title".

On page 51, line 14, strike out the word "Act" and insert in lieu thereof the word "title".

On page 51, line 20, strike out the word "Act" and insert in lieu thereof the word "title".

On page 51, after line 20, add the following new title:

"TITLE II—AMENDMENTS TO THE FEDERAL SALARY ACT OF 1967 REMOVAL OF MEMBERS OF CONGRESS FROM THE COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

"SEC. 201. (a) Section 225(f)(A) of the Federal Salary Act of 1967 is repealed.

"(b)(1) Section 225(g) of such Act is amended by striking out '(A),'.

"(2) Section 225(h) of such Act is amended by striking out '(A),'."

AMENDMENT NO. 986

(Ordered to be printed, and to lie on the table.)

EXPLANATION OF TAFT AMENDMENT ON DAYLIGHT SAVING TIME—I

Mr. TAFT. Mr. President, this amendment is identical to a bill which I introduced in the Senate on January 29, to permit any State to exempt for winter daylight saving time, if the Governor of the State proclaims that the new time is causing a hardship and not saving energy, or in the absence of such a proclamation by the Governor, if the State legislature makes such a proclamation.

I opposed winter daylight saving time when it passed the Senate in December, 1973, because I did not feel it would save a material amount of energy insofar as the economy of the State of Ohio is concerned, and because I worried about the schoolchildren who would have to go to school or wait for buses in the dark. This would especially be a problem for those citizens living on the western edge of a time zone, as many Ohioans do.

While I favor the complete repeal of

winter daylight saving time, and have another amendment which would accomplish this, I also feel that each individual State should have the opportunity to decide if winter daylight saving time is beneficial for its own economy. The present law states that if a Governor wanted to exempt his State from the law, he would have to proclaim a hardship and petition prior to the date of effectiveness of the law, which was January 6. My amendment would extend this time limit.

I ask unanimous consent that the text of the amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 986

On page 1, between lines 2 and 3, insert the following:

"TITLE I—FAIR LABOR STANDARDS AMENDMENT"

On page 1, line, 4, strike out the word "Act" and insert in lieu thereof the word "title".

On page 1, line 7, strike out the word "Act" and insert in lieu thereof the word "title".

On page 51, line 20, strike out the word "Act" and insert in lieu thereof the word "title".

On page 51, line 20, srike out the word "Act" and insert in lieu thereof the word "title".

On page 51, after line 20, add the following new title:

TITLE II—AMENDMENTS TO THE EMERGENCY DAYLIGHT SAVING TIME ENERGY CONSERVATION ACT OF 1973

EXEMPTION FROM EMERGENCY DAYLIGHT SAVING TIME

SEC. 201. Section 3(b) of the Emergency Daylight Saving Time Energy Conservation Act of 1973 is amended to read as follows:

"(b) Notwithstanding any other provision of law, if a State, by proclamation of its Governor or in the absence thereof by Act of its State legislature, makes a finding that an exemption from the operation of subsection (a) or a realinement of time zone limits is necessary to avoid undue hardship or to conserve fuel in such State or part thereof, the President or his designee may grant an exemption or realinement to such State.".

AMENDMENT NO. 987

(Ordered to be printed, and to lie on the table.)

EXPLANATION OF TAFT AMENDMENT ON DAYLIGHT SAVING TIME—II

Mr. TAFT. Mr. President, this is a very simple amendment. It would end winter daylight saving time, as of 2 a.m., the first Sunday after enactment.

There have been several bills introduced in the House and the Senate which would accomplish the termination of winter daylight saving time. I am a cosponsor of one of them. However, no action has been taken on these bills, and I feel that the impact will be lost if we fail to repeal the winter daylight saving time before it begins to get light earlier in the morning and people forget the hardship and inconvenience caused by a later daylight hour.

Therefore, I feel it is important that this amendment be accepted now, so that we can prevent a recurrence of the winter daylight saving again next winter.

I ask unanimous consent that the text of the amendment be printed in the RECORD as follows:

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 987

On page 1, between lines 2 and 3, insert the following:

"TITLE I—FAIR LABOR STANDARDS AMENDMENT".

On page 1, line 4, strike out the word "Act" and insert in lieu thereof the word "title".

On page 1, line 7, strike out the word "Act" and insert in lieu thereof the word "title".

On page 51, line 14, strike out the word "Act" and insert in lieu thereof the word title".

On page 51, line 20, strike out the word "Act" and insert in lieu thereof the word "title".

On page 51, after line 20, add the following new title:

TITLE II—AMENDMENTS TO THE EMERGENCY DAYLIGHT SAVING TIME ENERGY CONSERVATION ACT OF 1973

TERMINATION OF EMERGENCY DAYLIGHT SAVING TIME

SEC. 201. Notwithstanding the provisions of section 7 of the Emergency Daylight Saving Time Energy Conservation Act of 1973 such Act shall terminate at 2 o'clock antemeridian on the first Sunday which occurs after the date of enactment of this Act.

Mr. DOMINICK. Mr. President, as everyone knows, we are now considering a minimum wage subject which is no stranger to either House of the Congress. It has been approximately 6 months since the minimum wage bill was vetoed. And that veto was sustained. It has been approximately 3 months since Senators TAFT, BEALL, and I tried to put together an amendment which is similar to the one which the Senator from Ohio has just sent to the table on my behalf which would raise the minimum wage rate only. That amendment was tabled. So we have had a lot of argument about minimum wage.

During the debate last summer, I had warned about that veto, and now the Labor Committee, over the dissenting voices of Senators TAFT, BEALL and myself, has gone and reported out an almost identical bill to the vetoed proposal. I again fail to see the wisdom of such action, and as I have in the past, urge that the solution to the minimum wage impasse is compromise. Therefore, we will be offering an amendment as a substitute bill.

I might say that there comes a time in everybody's mind when we have been over and over a question that one wonders whether some of the people behind the Williams-Javits bill really want a minimum wage bill or an issue. If they want a minimum wage bill, I suggest to them an amendment that I will offer at a later date will be the one to accept because it avoids most of the controversial proposals.

The purpose of our amendment is very simple: to insure congressional action on a minimum wage increase that will be tolerable to all parties concerned. Our amendment quite simply provides for substantial increases in the wage. Some of us on the Labor Committee have been accused of not being willing to compromise on minimum wage legislation. Well, I would submit that when one follows the history of this debate and reviews the latest proposal that we are offering today, clearly it is a reasonable compromise between conflicting points of view.

The committee bill would immediately raise workers covered under section 6(a)(1) in the law to $2 an hour. We too would do that. The committee bill would raise workers covered under section 6(b) of the act to $1.80 an hour. We too do that. The committee bill would raise covered farmworkers to $1.60 an hour. We too do that. Eventually, the committee bill ends up at $2.20 an hour for all of these classes of employees. Our amendment pretty much follows the wage rate set out by the committee and would eventually result in a $2.30 an hour rate after 4 years for nonagricultural workers and in 5 years for farm workers.

So, in fact, our amendment offers higher rates than the committee bill and over a longer period.

Mr. President, we believe that this approach is a reasonable compromise so that people now covered under the act can and will be assured of a reasonable and orderly wage increase. I am not opposed to an increase in minimum wage and neither are, I am sure, the Senators who will support our approach. One only has to look at the prices of gas and food to know that we need some increase in the wage rates. However, the committee bill, I feel, does not carry with it a reasonable approach to the issues for which we have sought a compromise: Issues on extension of coverage, repeal of exemptions and a differential wage structure for youth.

If the Senate passes the bill as reported by the committee, it will be acting without facts or figures to assess the economic impacts. The problem, for example, created by the committee's action with respect to overtime for Federal, State and local employees will be enormous. State and local governments will bear the brunt of this provision, and I submit it will in the end only place greater strains on their budgets to the tune of almost $3.5 billion.

Mr. President, furthermore, most of the State and local employees working for State and local governments have entered into negotiations with and agreements with their own governments with respect to those particular phases.

Many of them are working 4 days on and then take a considreable period off. Some of them are working 8 days on and then taking a considerable period off. They are all different in the State and local governments. And when we blanket them in under an overtime provision, we negate all of the collective bargaining agreements they have arrived at. We create a really very substantial problem for the State and local governments.

I might also add, particularly with respect to the firemen and policemen whom we have been trying to protect for a long period, that this is also true.

Domestic coverage, of course, has been broadly granted by the committee. For the life of me, legislation which would require housewives to become personnel recordkeepers is not justifiable. I do not want to be the one who has to explain to the voting housewives why they have violated the Federal law by not paying minimum wage to the boy across the street who may mow the lawn once a week for $5. Then, of course, there is the payment to the babysitter from next door who may babysit more than on a "casual basis". I, of course, have trouble understanding what is a "casual" as opposed to a "not" casual basis. I am a lawyer, but I would have difficulty advising a client whether the girl who decides she is going to babysit 3 nights a week for the summer is an employee employed on a "casual" basis. There simply is no way for me as a lawyer to determine what this would mean.

Supposedly all is not lost with domestics because those who earn less than $50 per quarter are not covered. Well, that works out to little more than $4 per week. So if you work long enough for one employer to earn enough to buy about one-half tank of gas, then you must be paid the minimum wage. I believe that this will only result in administrative nightmares as well as more unemployment besides which the constitutional issue is here, which is that we are only supposed to be interfering in this type of thing where it affects interstate commerce. How in the world anyone can tell me that a babysitter coming in its substantially affecting interstate commerce, or that a neighbor's kid from across the street who mows your lawn is doing that, I do not know. If the court should ever go that way, certainly we will have no restrictions whatsoever as to what we can do in this Federal Government in the way of interference with personal liberties.

Mr. President, there are other features about the committee bill which I believe will result in further problems. Many exemptions which have been established by Congress for good reasons over the years will be wiped out without regard to whether these reasons still exist. Moreover, this bill fails completely to lessen the adverse impact of wage increases on youth unemployment. The bill fails to address itself to the unemployment rate among teenagers who are not in school. The unemployment rate for teenagers is high—16.8 percent for white youths aged 16–17 and 38.9 percent for 16–17-year-old nonwhites as of January 1974. In my opinion it is most unfortunate that the committee bill fails to address itself to that problem, which is probably as great, in the unemployment field, as any we have.

Mr. President, as the debate on the committee bill goes on, I am hopeful that my colleagues will adopt responsible amendments to strengthen the committee bill to provide a meaningful wage increase that is acceptable to all of us.

As I have said before, the amendment which has been offered by the senior Senator from Ohio with the Senator from Maryland (Mr. BEALL) and myself does nothing on these controversial subjects. All it does is provide an increase in the minimum wage which is what I, for one, and Senator TAFT and Senator BEALL have been trying to do for 2 years. We have been unable to get anywhere in committee, and we have been voted down on the floor.

It just seems to me without any doubt whatsoever that in order to avoid the risk of another vetoed bill, in order to avoid the possibility of having the minimum stay at its 1966 level, which is obviously unfair, and in order to meet the necessary increase in costs which those under the minimum wage are now enduring because of the inflationary process, we ought to go forward with a minimum wage measure at this time.

Mr. President, I ask unanimous consent that Mr. Robert Bohan, a member of the minority staff, be admitted to the floor during the debate on the minimum wage bill and the votes thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

What is the will of the Senate?

Mr. DOMINICK. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HASKELL). Without objection, it is so ordered.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, at 5:04 p.m. the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 5:48 p.m. when called to order by the Presiding Officer (Mr. HASKELL).

SENATE RESOLUTION 293—DISAPPROVAL OF PAY RECOMMENDATIONS OF THE PRESIDENT—UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I have been authorized by the distinguished majority leader to propose the following unanimous-consent requests. The requests have been cleared with the distinguished Republican leader, the distinguished assistant Republican leader, the distinguished manager of the resolution, Senate Resolution 293, the Senator from Wyoming (Mr. McGEE), the distinguished ranking Republican member of the Post Office and Civil Service Committee, the Senator from Hawaii (Mr. FONG), the distinguished Senator from Idaho (Mr. CHURCH), the distinguished Senator from Colorado (Mr. DOMINICK), the distinguished Senator from Idaho (Mr. McCLURE), the distinguished Senator from Alaska (Mr. STEVENS), the distinguished Senator from Virginia (Mr. WILLIAM L. SCOTT), and other Senators.

Mr. President, I ask unanimous consent that the distinguished majority leader may be permitted at any time on tomorrow to offer a cloture motion on Senate Resolution 293; provided further, that on Monday there be 2 hours of debate on an amendment to be offered by the Senator from Wyoming (Mr. McGEE), by way of a perfecting amendment to Senate Resolution 293, the time to be under the control, respectively, of the Senator from Wyoming (Mr. McGEE) and the Senator from Idaho (Mr. CHURCH); provided further, that there be a time limitation on an amendment in the second degree to the amendment by Mr. McGEE, the second degree amendment to be offered by Mr. FONG, the time limitation on that amendment to be 2 hours, to be equally divided between and controlled by Mr. FONG and Mr. CHURCH;

Provided further, that the vote on the amendment by Mr. FONG occur at the hour of 3:30 p.m. on Monday;

That immediately upon the disposition of that vote, a vote occur on the amendment by Mr. McGEE;

That immediately upon the disposition of that vote, the Senate proceed to the consideration of the substitute amendment to be proposed by Mr. CHURCH and Mr. DOMINICK;

Provided further, that the vote on the motion to invoke cloture on Senate Resolution 293 occur on Wednesday next at the hour of 11 o'clock a.m.;

Provided further, that no tabling motion be in order with respect to the amendment of Mr. FONG or the amendment of Mr. McGEE, and that regardless of the disposition of the amendment by Mr. FONG, no further amendment in the second degree be in order to the amendment in the second degree be in order to the amendment of Mr. McGEE.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. Would the Senator from West Virginia clarify one point? As to the Church amendment, if we get to that point, there is no agreement that the Church amendment would not be subject to any normal parliamentary procedure, such as the offering of substitutes?

Mr. ROBERT C. BYRD. No, the agreement would only assure that the Senate would proceed to the consideration of the Church-Dominick substitute. Amendments to the substitute would be in order.

Before the Chair rules on the request, if the request is agreed to, it would be my intention to, and I do, ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until the hour of 10 o'clock a.m. on Monday.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Then, if the request is agreed to, I shall ask unanimous consent that at a certain hour on Monday, the Senate proceed to the consideration of the Fong amendment, and that it then proceed, after 2 hours, to the consideration of the McGee amend-

WASHINGTON STAR-NEWS Sunday, March 10, 1974

Senate OKs Ban on Age Bias Against Employes

By Joseph Young
Star-News Staff Wrier

The Senate has approved legislation to protect older government employes against discriminationn because of age.

The the first time, employes who feel they have been discriminated against in promotions and career advancment, appointments or reductions-in-force would be able to appeal their cases to the Civil Service Commission.

Also, should their appeal to the CSC be turned down, they would have the right to file civil suits against their agencies in federal courts.

THE BILL would prohibit discrimination because of age in all foms of federal personnell practices. At present there is a law banning age discrimination in the private sector, but none for federal service.

The provision barring ag discrimination was sponsored by Sen. Lloyd Bentsen, D-tex., as an amendment to the minimum wage bill. A similar provision has been adopted by the House Education and Labor Committee as part of its minimum wage measure. Enactment this year is expected

Bentsen has led the fight in Congress to bar age discrimination in government.

WHEN YOU TALK about older employes, it is not necessarily those in their 50s or 60s. It frequently involves those in their 30s and 40s who are considered "over the hill" as far as promotions and career advancement is concerned.

No one wants to deny promotions to young, talented employes to keep the federal service dynamic and innovative. But Bentsen and others in Congress feel it is a terrible waste of experience, expertise and ability to deny promotions and appointments to people merely because they have passed beyond the first blush of youth.

It seems in overnment that older employes are passed over many times when it comes to promotions and appoinments, and hey often are pressured to retire when agencies are involved in reductions-in-force programs.

A GOOD EXAMPLE of how age discrimination works can be found in the Environmental Protection Agency.

Several years ago then Administrator, William Ruckelshaus, issued an directive on equal employment opportunity that called for an end to discrimination not only because of race, sex or religion but age as well.

However, Ruckelshaus was succeeded as administrator by Russell Train, who subsquently issued a new EEO policy statement which did not mention age at all.

Of course, this could have been an oversight. But older EPA employes wonder about this in view of a subsequent memoradnum that was issued last month by the EPA in which it stated, "The administrator has expressed a desire to meet informally over lunch, with bright young staff people from various offices of EPA."

Fine, but what about bright older persons?

THERE IS MORE evidence that suggests that EPA is discriminating against oler employes.

In one of its diisions there are 30 employes. During the past year there have been 8 promotions, all of them given to employes under 36.

Of 12 employes in the 20-to-30 age group, five receiveed promotions the pastyear. Three of the eight employes in the 31-to-35-year age group got promotions. In contract, none of the 10 employes over 35 received a promotion.

for cotton ginning, sugarcane and sugar beet processing employees.

The new provisions in section 13(b) would provide for premium pay for hours worked in excess of specified hours for different work weeks during the year.

S. 2747 repeals the year-round overtime exemption for cotton ginning and sugar processing employees in section 13(b)(15) of the Fair Labor Standards Act, but retains the exemption for employees engaged in processing maple sap into maple syrup or sugar.

The amendment to phase down the overtime exemption for cotton ginning and sugar processing employees is as follows:

First, effective on the effective date, the workweek exemption is as follows: Seventy-two hours each week for 6 weeks of the year; 64 hours each week for 4 weeks of the year; 54 hours each week for 2 weeks of the year; 48 hours each week for the balance of the year.

Second, in 1975, the workweek exemption is as follows: Sixty-six hours each week for 6 weeks of the year; 60 hours each week for 4 weeks of the year; 50 hours each week for 2 weeks of the year; 46 hours each week for 2 weeks of the year; 44 hours each week for the balance of the year.

Third, in 1976, the workweek exemption is as follows: Sixty hours each week for 6 weeks of the year; 56 hours each week for 4 weeks of the year; 48 hours each week for 2 weeks of the year; 44 hours each week for 2 weeks of the year; 40 hours each week for the balance of the year.

The workweek exemptions are applicable during the actual season within a period of 12 consecutive months as opposed to the calendar year and are not limited to a period of consecutive weeks.

In addition, the cotton processing and sugar processing exemptions under section 7 of the law are retained but limited to 48 hours during the appropriate weeks. Furthermore, it is provided that an employer who receives an exemption under this subsection will not be eligible for other overtime exemptions under section 13(b)(24) or (25) or section 7.

The employer may specify the workweek to be allocated to the particular overtime restriction either at the beginning or the end of that particular work. The enforcement procedure of the Department of Labor, under other similar provisions of law, is to require the employer to specify which provision of the exemption will be applicable for that workweek no later than the end of that workweek.

Furthermore, when the employer makes the selection, it is applicable to all employees covered by the exemption during that workweek.

Another question has been raised concerning the amendments to the "tip credit" language of section 3(m). As noted in the committee report, and as I have stated, the intent of this provision is to make clear where the burden of proof rests in legal proceedings. Under current law, the employee, who can ill afford legal representation has erroneously been required by one court to meet the burden of proving to the court's satisfaction that the amount of tips he or she actually received was less than the amount claimed by the employer as a tip credit.

Shultz v. *William Lee Hotel Company, Inc.*, 304 F. Supp. 427 (W. D. Tenn. 1969). Under this provision the burden is clearly on the employer to provide to a court's satisfaction that the amount of tip credit claimed by such employer was actually received as tips by the employee.

A third question has been raised regarding the phrase "maid or custodial services" in the amendment to section 13(b)8 of the act.

In phasing out completely the overtime exemption for maids and custodial workers the bill brings the full protection of the maximum hours provisions of the law to such custodial workers as maids, housemen, gardeners, and laundry workers.

The special 44-hour overtime exemption on the other hand would be applicable to other employees such as waiters, waitresses, and desk clerks, unless they perform custodial duties which are more than incidental to their noncustodial responsibilities.

Mr. President, I yield back my time.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

PROGRAM FOR TODAY AND TOMORROW

Mr. TOWER. Mr. President, will the Senator from New Jersey yield to me so that I may ask a question of the distinguished majority leader?

Mr. WILLIAMS. I yield.

Mr. TOWER. Mr. President, at this time, while Senators are in the Chamber in anticipation of the vote, I wish to ask the distinguished majority leader what he has in store for us for the remainder of this evening and tomorrow.

Mr. MANSFIELD. Mr. President, in response to the question raised by the distinguished acting Republican leader, as soon as the pending business is disposed of, it is the intent, according to the joint leadership, according to previous consultation, to lay before the Senate Calendar No. 669, S. 3066 the housing bill. It is anticipated we will come in around 10 o'clock tomorrow morning and hopefully we will be able to get some of the amendments out of the way and hopefully, and I say this after discussing the matter with the manager of the bill, the Senator from Alabama (Mr. SPARKMAN), and the ranking Republican member of the committee, the Senator from Texas (Mr. TOWER), we might be able to arrive at a time agreement on the consideration of the bill, covering amendments and the bill itself.

Mr. TOWER. That is my understanding. The consent request that will be suggested, I understand, will be 4 hours on the bill and 30 minutes on amendments. I still have one Senator on my side to clear it with, but we can anticipate that will probably be the agreement and I think it would be well to serve notice on Senators to find if any object or want more time.

Mr. MANSFIELD. I appreciate that.

FAIR LABOR STANDARDS AMENDMENTS OF 1974

The Senate continued with the consideration of the bill (S. 2747) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that act, to expand the coverage of the act, and for other purposes.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time has been yielded back. The question is, Shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BROCK. Mr. President, on this vote I have a live pair with the Senator from Arizona (Mr. GOLDWATER). Were he present and voting, he would vote "nay." Were I permitted to vote, I would vote "yea." I therefore withhold my vote.

Mr. TOWER (after having voted in the negative). Mr. President, on this vote I have a live pair with the Senator from Kentucky (Mr. COOK). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Michigan (Mr. HART) is necessarily absent.

I further announce that, if present and voting, the Senator from Michigan (Mr. HART) would vote "yea."

Mr. TOWER. I announce that the Senator from Kentucky (Mr. COOK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from North Carolina (Mr. HELMS), and the Senator from Pennsylvania (Mr. HUGH SCOTT) are necessarily absent.

On this vote, the Senator from Pennsylvania (Mr. HUGH SCOTT) is paired with the Senator from North Carolina (Mr. HELMS). If present and voting, the Senator from Pennsylvania would vote "yea" and the Senator from North Carolina would vote "nay."

I further announce that the Senator from Connecticut (Mr. WEICKER) is absent due to death in the family.

The result was announced—yeas 69, nays 22, as follows:

[No. 63 Leg.]

YEAS—69

Abourezk	Gravel	Montoya
Aiken	Hartke	Moss
Allen	Haskell	Muskie
Baker	Hatfield	Nelson
Bayh	Hathaway	Nunn
Beall	Huddleston	Packwood
Bentsen	Hughes	Pastore
Bible	Humphrey	Pearson
Biden	Inouye	Pell
Brooke	Jackson	Percy
Burdick	Javits	Proxmire
Byrd, Robert C.	Johnston	Randolph
Cannon	Kennedy	Ribicoff
Case	Long	Schweiker
Chiles	Magnuson	Sparkman
Church	Mansfield	Stafford
Clark	Mathias	Stevens
Cranston	McGee	Stevenson
Dole	McGovern	Symington
Domenici	McIntyre	Talmadge
Eagleton	Metcalf	Tunney
Fong	Metzenbaum	Williams
Fulbright	Mondale	Young

NAYS—22

Bartlett	Dominick	McClellan
Bellmon	Eastland	McClure
Bennett	Ervin	Roth
Buckley	Fannin	Scott, William L.
Byrd, Harry F., Jr.	Gurney	Stennis
Cotton	Hansen	Taft
Curtis	Hollings	Thurmond
	Hruska	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Brock, for.
Tower, against.

NOT VOTING—7

Cook	Hart	Weicker
Goldwater	Helms	
Griffin	Scott, Hugh	

So the bill (S. 2747) was passed, as follows:

S. 2747

An act to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that Act, to expand the coverage of the Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCES TO ACT

SECTION 1. (a) This Act may be cited as the "Fair Labor tSandards Amendments of 1974".

(b) Unless otherwise specified, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the section or other provision amended or repealed is a section or other provision of the Fair Labor Standards Act of 1938 (29 U.S.C. 201-219).

INCREASE IN MINIMUM WAGE RATE FOR EMPLOYEES COVERED BEFORE 1966

SEC. 2. Section 6(a)(1) is amended to read as follows:

"(1) not less than $2 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1974, and not less than $2.20 an hour thereafter, except as otherwise provided in this section;".

INCREASE IN MINIMUM WAGE RATE FOR NONAGRICULTURAL EMPLOYEES COVERED IN 1966 AND 1973

SEC. 3. Section 6(b) is amended (1) by inserting ", title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974" after "1966", and (2) by striking out paragraphs (1) through (5) and inserting in lieu thereof the following:

"(1) not less than $1.80 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1974,

"(2) not less than $2 an hour during the second year from the effective date of such amendments,

"(3) not less than $2.20 an hour thereafter.".

INCREASE IN MINIMUM WAGE RATE FOR AGRICULTURAL EMPLOYEES

SEC. 4. Section 6(a)(5) is amended to read as follows:

"(5) if such employee is employed in agriculture, not less than—

"(A) $1.60 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1974.

"(B) $1.80 an hour during the second year from the effective date of such amendments,

"(C) $2 an hour during the third year from the effective date of such amendments,

"(D) $2.20 an hour thereafter.".

INCREASE IN MINIMUM WAGE RATES FOR EMPLOYEES IN PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 5. (a) Section 5 is amended by adding at the end thereof the following new subsection:

"(e) The provisions of this section, section 6(c), and section 8 shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands, (2) by an establishment which is a hotel, motel, or restaurant, or (3) by any other retail or service establishment which employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch or curb or counter service, to the public, to employees, or to members or guests of members of clubs. The minimum wage rate of such an employee shall be determined under this Act in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this Act. As used in the preceding sentence, the term 'State' does not include a territory or possession of the United States.".

(b) Effective on the date of the enactment of the Fair Labor Standards Amendments of 1974, subsection (c) of section 6 is amended by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

(2) Except as provided in paragraphs (4) and (5), in the case of any employee who is covered by such a wage order on the date of enactment of the Fair Labor Standards Amendments of 1974 and to whom the rate or rates prescribed by subsection (a) or (b) would otherwise apply, the wage rate applicable to such employee shall be increased as follows:

"(A) Effective on the effective date of the Fair Labor Standards Amendments of 1974, the wage order rate applicable to such employee on the day before such date shall—

"(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

"(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour.

"(B) Effective on the first day of the second and each subsequent year after such date, the highest wage order rate applicable to such employees on the date before such first day shall—

"(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

"(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour.

In the case of any employee employed in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5, to whom the rate or rates prescribed by subsection (a) (5) would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the increases prescribed by this paragraph shall be applied to the sum of the wage rate in effect under such wage order and the amount by which the employee's hourly wage rate is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order.

"(3) In the case of any employee employed in Puerto Rico or the Virgin Islands to whom this section is made applicable by the amendments made to this Act by the Fair Labor Standards Amendments of 1974, the Secretary shall, as soon as practicable after the date of enactment of the Fair Labor Standards Amendments of 1974, appoint a special industry committee in accordance with section 5 to recommend the highest minimum wage rate or rates, which shall be not less than 60 per centum of the otherwise applicable minimum wage rate in effect under subsection (b) or $1.00 an hour, whichever is greater, to be applicable to such employee in lieu of the rate or rates prescribed by subsection (b). The rate recommended by the special industry committee shall (A) be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation, but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1974, and (B) except in the case of employees of the government of Puerto Rico or any political subdivision thereof, be increased in accordance with paragraph (2)(B).

"(4)(A) Notwithstanding paragraph (2)(A) or (3), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(A) or (3) of this subsection, shall, on the effective date of the wage increase under paragraph (2)(A) or of the wage rate recommended under paragraph (3), as the case may be, be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) or $1.00, whichever is higher.

"(B) Notwithstanding paragraph (2)(B), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(B), shall, on and after the effective date of the first wage increase under paragraph (2)(B), be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) or $1.00, whichever is higher.

"(5) If the wage rate of an employee is to be increased under this subsection to a wage rate which equals or is greater than the wage rate under subsection (a) or (b) which, but for paragraph (1) of this subsection, would be applicable to such employee, this subsection shall be inapplicable to such employee and the applicable rate under such subsection shall apply to such employee.

"(6) Each minimum wage rate prescribed by or under paragraph (2) or (3) shall be in effect unless such minimum wage rate has been superseded by a wage order (issued by the Secretary pursuant to the recommendation of a special industry committee convened under section 8) fixing a higher minimum wage rate."

(c)(1) The last sentence of section 8(b) is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following: "except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 6(a) or 6(b), which would be applicable but for section 6(c), unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage."

(2) The third sentence of section 10(a) is amended by inserting after "modify" the following: "(including provision for the payment of an appropriate minimum wage rate)".

(d) Section 8 is amended (1) by striking out "the minimum wage prescribed in paragraph (1) of section 6(a) in each such industry" in the first sentence of subsection (a) and inserting in lieu thereof "the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 6(a) but for section 6(c)", (2) by striking out "the minimum wage rate prescribed in paragraph (1) of section 6(a)" in the last sentence of subsection (a) and inserting in lieu thereof "the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 6(a)", and (3) by striking out "prescribed in paragraph (1) of section 6(a)" in subsection (c) and inserting in lieu thereof "in effect under paragraph (1) or (5) of section 6(a) (as the case may be)".

FEDERAL AND STATE EMPLOYEES

SEC. 3. (a)(1) Section 3(d) is amended to read as follows:

"(d) 'Employer' includes any person acting directly or indirectly in the interest of an

employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

(2) Section 3(e) is amended to read as follows:

"(e)(1) Except as provided in paragraphs (2) and (3), the term 'employee' means any individual employed by an employer.

"(2) In the case of an individual employed by a public agency, such term means—

"(A) any individual employed by the Government of the United States—

"(i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),

"(ii) in any executive agency (as defined in section 105 of such title),

"(iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,

"(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

"(v) in the Library of Congress;

"(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

"(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

"(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

"(ii) who—

"(I) holds a public elective office of that State, political subdivision, or agency,

"(II) is selected by the holder of such an office to be a member of his personal staff,

"(III) is appointed by such an officeholder to serve on a policymaking level, or

"(IV) who is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office.

"(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.".

(3) Section 3(h) is amended to read as follows:

"(h) 'Industry' means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.".

(4) Section 3(r) is amended by inserting "or" at the end of paragraph (2) and by inserting after that paragraph the following new paragraph:

"(3) in connection with the activities of a public agency,".

(5) Section 3(s) is amended—

(A) by striking out in the matter preceding paragraph (1) "including employees handling, selling, or otherwise working on goods" and inserting in lieu thereof "or employees handling, selling, or otherwise working on goods or materials",

(B) by striking out "or" at the end of paragraph (3),

(C) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; or",

(D) by adding after paragraph (4) the following new paragraph:

"(5) is an activity of a public agency.", and

(E) by adding after the last sentence the following new sentence: "The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.".

(6) Section 3 is amended by adding after subsection (w) the following:

"(x) 'Public agency' means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency.".

(b) Section 4 is amended by adding at the end thereof the following new subsection:

"(f) The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to any individual employed in the Library of Congress to provide for the carrying out of the Secetary's functions under this Act with respect to such individuals. Notwithstanding any other provision of this Act, or any other law, the Civil Service Commission is authorized to administer the provisions of this Act with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 16(b) of this Act.".

(c) Section 7 is amended by adding at the end thereof the following new subsection:

"(k) No public agency shall be deemed to have violated subsection (a) with regard to any employee engaged in fire protection or law enforcement activities (including security personnel in correctional institutions) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of twenty-eight consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed for his employment in excess of—

"(1) one hundred and ninety-two hours in each such twenty-eight day period during the first year from the effective date of the Fair Labor Standards Amendments of 1974;

"(2) one hundred and eighty-four hours in each such twenty-eight day period during the second year from such date;

"(3) one hundred and seventy-six hours in each such twenty-eight day period during the third year from such date;

"(4) one hundred and sixty-eight hours in each such twenty-eight day period during the fourth year from such date; and

"(5) one hundred and sixty hours in each such twenty-eight day period thereafter.".

(d)(1) The second sentence of section 16(b) is amended to read as follows: "Action to recover such liability may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.".

(2)(A) Section 6 of the Portal-to-Portal Pay Act of 1947 is amended by striking out the period at the end of paragraph (c) and by inserting in lieu thereof a semicolon and by adding after such paragraph the following:

"(d) with respect to any cause of action brought under section 16(b) of the Fair Labor Standards Act of 1938 against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.".

(B) Section 11 of such Act is amended by striking out "(b)" after "section 16".

DOMESTIC SERVICE WORKERS

SEC. 7. (a) Section 2(a) is amended by inserting at the end the following new sentence: "The Congress further finds that the employment of persons in domestic service in households affects commerce."

(b)(1) Section 6 is amended by adding after subsection (e) the following new subsection:

"(f) Any employee who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under section 6(b) unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act constitute 'wages', for purposes of title II of such Act."

(2) Section 7 is amended by adding after the subsection added by section 6(c) of this Act the following new subsection:

"(l) Subsection (a)(1) shall apply with respect to any employee who in any workweek is employed in domestic service in a household unless such employee's compensation for such work would not because of section 209(g) of the Social Security Act constitute 'wages', for purposes of title II of such Act."

(3) Section 13(a) is amended by adding at the end the following new paragraph:

"(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary)."

(4) Section 13(b) is amended by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or" and by adding after that paragraph the following new paragraph:

"(20) any employee who is employed in domestic service in a household and who resides in such household; or".

RETAIL AND SERVICE ESTABLISHMENTS

SEC. 8. (a) Effective January 1, 1975, section 13(a)(2) (relating to employees of retail and service establishments) is amended by striking out "$250,000" and inserting in lieu thereof "$225,000".

(b) Effective January 1, 1976, such section is amended by striking out "$225,000" and inserting in lieu thereof "$200,000".

(c) Effective January 1, 1977, such section is amended by striking out "or such establishment has an annual dollar volume of sales which is less than $200,000 (exclusive of excise taxes at the retail level which are separately stated)".

TOBACCO EMPLOYEES

SEC. 9. (a) Section 7 is amended by adding after the subsection added by section 7(b)(2) of this Act the following:

"(m) For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

"(1) is employed by such employer—

"(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco.

"(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

"(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

"(2) receives for—

"(A) such employment by such employer which is in excess of ten hours in any workday, and

"(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.".

(b)(1) Section 13(a)(14) is repealed.

(2) Section 13(b) is amended by adding after the paragraph added by section 7(b)(4) of this Act the following new paragarph:

"(21) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco; or".

TELEGRAPH AGENCY EMPLOYEES

SEC. 10. (a) Section 13(a)(11) (relating to telegraph agency employees) is repealed.

(b)(1) Section 13(b) is amended by adding after the paragraph added by section 9(b)(2) of this Act the following new paragraph:

"(22) any employee or proprietor in a retail or service establishment, which qualifies as an exempt retail or service establishment under paragraph (2) of subsection (a) with respect to whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month and receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, section 13(b)(22) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(3) Effective two years after such date, section 13(b)(22) is repealed.

SEAFOOD CANNING AND PROCESSING EMPLOYEES

SEC. 11. (a) Section 13(b)(4) (relating to fish and seafood processing employees) is amended by inserting "who is" after "employee", and by inserting before the semicolon the following: ", and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, section 13(b)(4) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours."

(c) Effective two years after such date, section 13(b)(4) is repealed.

NURSING HOME EMPLOYEES

SEC. 12. (a) Section 13(b)(8) (insofar as it relates to nursing home employees) is amended by striking out "any employee who (A) is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises" and the remainder of that paragraph.

(b) Section 7(j) is amended by inserting after "a hospital" the following: "or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises".

HOTEL, MOTEL, AND RESTAURANT EMPLOYEES AND TIPPED EMPLOYEES

SEC. 13. (a) Section 13(b)(8) (insofar as it relates to hotel, motel, and restaurant employees) (as amended by section 12) is amended (1) by striking out "any employee" and inserting in lieu thereof "(A) any employee (other than an employee of a hotel or motel who is employed to perform maid or custodial services) who is," (2) by inserting before the semicolon the following: "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed", and (3) by adding after such section the following:

"(B) any employee who is employed by a hotel or motel to perform maid or custodial services and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, subparagraphs (A) and (B) of section 13(b)(8) are each amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-six hours".

(c) Effective two years after such date, subparagraph (B) of section 13(b)(8) is amended by striking out "forty-six hours" and inserting in lieu thereof "forty-four hours".

(d) Effective three years after such date, subparagraph (B) of section 13(b)(8) is repealed and such section is amended by striking out "(A) ".

(e) The last sentence of section 3(m) is amended to read as follows: "In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this section, and (2) all tips received by such employee have been retained by the employee, except that nothing herein shall prohibit the pooling of tips among employees who customarily and regularly receive tips.".

SALESMEN, PARTSMEN, AND MECHANICS

SEC. 14. Section 13(b)(10) (relating to salesmen, partsmen, and mechanics) is amended to read as follows:

"(10)(A) any salesman primarily engaged in selling automobiles, trailers, trucks, farm implements, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such boats or vehicles to ultimate purchasers; or

"(B) any partsman primarily engaged in selling parts for automobiles, trucks, or farm implements and any mechanic primarily engaged in servicing such vehicles, if they are employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; or".

FOOD SERVICE ESTABLISHMENT EMPLOYEES

SEC. 15. (a) Section 13(b)(18) (relating to food service and catering employees) is amended by inserting immediately before the semicolon the following: "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, such section is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(c) Effective two years after such date, such section is repealed.

BOWLING EMPLOYEES

SEC. 16. (a) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, section 13(b)(19) (relating to employees of bowling establishments) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(b) Effective two years after such date, such section is repealed.

SUBSTITUTE PARENTS FOR INSTITUTIONALIZED CHILDREN

SEC. 17. Section 13(b) is amended by inserting after the paragraph added by section 10(b)(1) of this Act the following new paragraph:

"(23) any employee who is employed with his spouse by a nonprofit education institution to serve as the parents of children—

"(A) who are orphans or one of whose natural parents is deceased, or

"(B) who are enrolled in such institution and reside in residential facilities of the institution, while such children are in residence at such institution,

if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or;".

EMPLOYEES OF CONGLOMERATES

SEC. 18. Section 13 is amended by adding at the end thereof the following:

"(g) The exemption from section 6 provided by paragraphs (2) and (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support, the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated), except that the exemption from section 6 provided by subparagraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) if it were in an enterprise described in section 3(s).".

SEASONAL INDUSTRY EMPLOYEES

SEC. 19. (a) Sections 7(c) and 7(d) are each amended—

(1) by striking out "ten workweeks" and inserting in lieu thereof "seven workweeks", and

(2) by striking out "fourteen workweeks" and inserting in lieu thereof "ten workweeks".

(b) Section 7(c) is amended by striking

out "fifty hours" and inserting in lieu thereof "forty-eight hours".

(c) Effective January 1, 1975, sections 7(c) and 7(d) are each amended—

(1) by striking out "seven workweeks" and inserting in lieu thereof "five workweeks", and

(2) by striking out "ten workweeks" and inserting in lieu thereof "seven workweeks".

(d) Effective January 1, 1976, sections 7 (c) and 7(d) are each amended—

(1) by striking out "five workweeks" and inserting in lieu thereof "three workweeks", and

(2) by striking out "seven workweeks" and inserting in lieu thereof "five workweeks".

(e) Effective December 31, 1976, sections 7(c) and 7(d) are repealed.

COTTON GINNING AND SUGAR PROCESSING EMPLOYEES

SEC. 20. (a) Section 13(b)(15) is amended to read as follows:

"(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or".

(b)(1) Section 13(b) is amended by adding after paragraph (23) the following new paragraph:

"(24) any employee who is engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities and who receives compensation for employment in excess of—

"(A) seventy-two hours in any workweek for not more than six workweeks in a year,

"(B) sixty-four hours in any workweek for not more than four workweeks in that year,

"(C) fifty-four hours in any workweek for not more than two workweeks in that year, and

"(D) forty-eight hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective January 1, 1975, section 13 (b)(24) is amended—

(A) by striking out "seventy-two" and inserting in lieu thereof "sixty-six";

(B) by striking out "sixty-four" and inserting in lieu thereof "sixty";

(C) by striking out "fifty-four" and inserting in lieu thereof "fifty";

(D) by striking out "and" at the end of subparagraph (C); and

(E) by striking out "forty-eight hours in any other workweek in that year" and inserting in lieu thereof the following: "forty-six hours in any workweek for not more than two workweeks in that year; and

"(E) forty-four hours in any other workweek in that year,".

(3) Effective January 1, 1976, section 13 (b)(24) is amended—

(A) by striking out "sixty-six" and inserting in lieu thereof "sixty";

(B) by striking out "sixty" and inserting in lieu thereof "fifty-six";

(C) by striking out "fifty" and inserting in lieu thereof "forty-eight";

(D) by striking out "forty-six" and inserting in lieu thereof "forty-four"; and

(E) by striking out "forty-four" and inserting in lieu thereof "forty".

(c)(1) Section 13(b) is amended by adding after paragraph (24) the following new paragraph:

"(25) any employee who is engaged in the processing of sugar beets, sugar beet molasses, or sugarcane into sugar (other than refined sugar) or syrup and who receives compensation for employment in excess of—

"(A) seventy-two hours in any workweek for not more than six workweeks in a year,

"(B) sixty-four hours in any workweek for not more than four workweeks in that year,

"(C) fifty-four hours in any workweek for not more than two workweeks in that year, and

"(D) forty-eight hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective January 1, 1975, section 13 (b)(25) is amended—

(A) by striking out "seventy-two" and inserting in lieu thereof "sixty-six";

(B) by striking out "sixty-four" and inserting in lieu thereof "sixty";

(C) by striking out "fifty-four" and inserting in lieu thereof "fifty";

(D) by striking out "and" at the end of subparagraph (C); and

(E) by striking out "forty-eight hours in any other workweek in that year" and inserting in lieu thereof the following: "forty-six hours in any workweek for not more than two workweeks in that year; and

"(E) forty-four hours in any other workweek in that year,".

(3) Effective January 1, 1976, section 13 (b)(25) is amended—

(A) by striking out "sixty-six" and inserting in lieu thereof "sixty";

(B) by striking out "sixty" and inserting in lieu thereof "fifty-six";

(C) by striking out "fifty" and inserting in lieu thereof "forty-eight";

(D) by striking out "forty-six" and inserting in lieu thereof "forty-four"; and

(E) by striking out "forty-four" and inserting in lieu thereof "forty".

LOCAL TRANSIT EMPLOYEES

SEC. 21. (a) Section 7 is amended by adding after the subsection added by section 9(a) of this Act the following new subsection:

"(n) In the case of an employee of an employer engaged in the business of operating a street, suburban, or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit) in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment."

(b)(1) Section 13(b)(7) (relating to employees of street, suburban, or interurban electric railways or local trolley or motorbus carriers) is amended by striking out ", if the rates and services of such railway or carrier are subject to regulation by a State or local agency" and inserting in lieu thereof the following: "(regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed."

(2) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, such section is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(3) Effective two years after such date, such section is repealed.

COTTON AND SUGAR SERVICES EMPLOYEES

SEC. 22. Section 13 is amended by adding after the subsection added by section 18(a) the following:

"(h) The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

"(1) is employed by such employer—

"(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

"(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

"(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; and

"(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and".

"(2) receiver for—

"(A) such employment by such employer which is in excess of ten hours in any workday, and

"(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 7.".

OTHER EXEMPTIONS

SEC. 23. (a)(1) Section 13(a)(9) (relating to motion picture theater employees) is repealed.

(2) Section 13(b) is amended by adding after paragraph (25) the following new paragraph:

"(26) any employee employed by an establishment which is a motion picture theater;".

(b)(1) Section 13(a)(13) (relating to small logging crews) is repealed.

(2) Section 13(b) is amended by adding after paragraph (26) the following new paragraph:

"(27) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight.".

(c) Section 13(b)(2) (insofar as it relates to pipeline employees) is amended by inserting after "employer" the following: "engaged in the operation of a common carrier by rail and".

EMPLOYMENT OF STUDENTS

SEC. 24. (a) Section 14 is amended by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following:

"SEC. 14. (a) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitation as to time, number, proportion, and length of service as the Secretary shall prescribe.

"(b)(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, which-

ever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

"(B) Except as provided in paragraph (4)(B), the proportion of student hours of employment under special certificates issued under subparagraph (A) to the total hours of employment of all employees in any retail or service establishment may not exceed (i) such proportion for the corresponding month of the twelve-month period preceding May 1, 1961, (ii) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered by this Act for the first time on or after the effective date of the Fair Labor Standards Amendments of 1966 or the Fair Labor Standards Amendments of 1974, such proportion for the corresponding month of the twelve-month period immediately prior to the applicable effective date, or (iii) in the case of a retail or service establishment coming into existence after May 1, 1961, or a retail or service establishment for which records of student hours worked are not available, a proportion of student hours of employment to total hours of employment of all employees based on the practice during the twelve-month period preceding May 1, 1961, in similar establishments of the same employer in the same general metropolitan area in which the new establishment is located, similar establishments of the same employer in the same or nearby counties if the new establishment is not in a metropolitan area, or other establishments of the same general character operating in the community or the nearest comparable community. For the purposes of the preceding sentence, the term 'student hours of employment' means student hours worked at less than $1.00 an hour, except that such term shall include, in States whose minimum wages were at or above $1.00 an hour in the base year, hours worked by students at the State minimum wage in the base year.

"(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 6(a)(5) or not less than $1.30 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(c)(3)), of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

"(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

"(4)(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

"(B) If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds the employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed four—

'(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

"(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

"(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate."

(b) Section 14 is further amended by redesignating subsection (d) as subsection (c) and by adding at the end the following new subsection:

"(d) The Secretary may by regulation or order provide that sections 6 and 7 shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws."

(c) Section 4(d) is amended by adding at the end thereof the following new sentence: "Such report shall also include a summary of the special certificates issued under section 14(b)."

CHILD LABOR

SEC. 25. (a) Section 12 (relating to child labor) is amended by adding at the end thereof the following new subsection:

"(d) In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age."

(b) Section 13(c)(1) (relating to child labor in agriculture) is amended to read as follows:

"(c)(1) Except as provided in paragraph (2), the provisions of section 12 relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

"(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of section 13(a)(6)(A)) required to be paid at the wage rate prescribed by section 6(a)(5),

"(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

"(C) is fourteen years of age or older.".

(c) Section 16 is amended by adding at the end thereof the following new subsection:

"(e) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, may be—

"(1) deducted from any sums owing by the United States to the person charged;

"(2) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

"(3) ordered by the court in an action brought under section 15(a)(4), to be paid to the Secretary.

Any administrative determination by the Secretary of the amount of such penalty shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary. Sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provisions of section 2 of an Act entitled 'An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes' (29 U.S.C. 9a)."

SUITS BY SECRETARY FOR BACK WAGES

SEC. 26. The first three sentences of section 16(c) are amended to read as follows: "The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of the

unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) to bring an action by or on behalf of any employee and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 6 and 7 or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provision of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary."

ECONOMIC EFFECTS STUDIES

SEC. 27. Section 4(d) is amended by—

(1) inserting "(1)" immediately after "(d)",

(2) inserting in the second sentence after the term "minimum wages" the following: "and overtime coverage"; and

(3) by adding at the end thereof the following new paragraphs:

"(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 13 of this Act, and the extent to which such exemptions apply to employees of establishment described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

"(3) The Secretary of Labor shall conduct a study on means to prevent curtailment of employment opportunities among manpower groups which have had historically high incidences of unemployment, such as disadvantaged minorities, youth, elderly, and such other groups the Secretary may designate. Such studies shall include suggestions under the authority that the Secretary of Labor has available under section 14 of the Fair Labor Standards Act and shall be transmitted to the Congress one year after the effective date of these amendments and thereafter at two-year intervals after the effective date of these amendments."

AGE DISCRIMINATION

SEC. 28. (1) the first sentence of section 11 (b) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630(b)) is amended by striking out "twenty-five" and inserting in lieu thereof "twenty".

Nondiscrimination on Account of Age in Government Employment

(2) The second sentence of section 11(b) is amended to read as follows: "The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United States, or a corporation wholly owned by the Government of the United States.".

(3) Section 11(c) of such Act is amended by striking out ", or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance".

(4) Section 11(f) of such Act is amended to read as follows:

"(f) The term 'employee' means an individual employed by any employer except that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy-making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision."

(5) Section 16 of such Act is amended by striking the figure "$3,000,000", and inserting in lieu thereof "$5,000,000".

(b) (1) The Age Discrimination in Employment Act of 1967 is amended by redesignating sections 15 and 16, and all references thereto, as section 16 and section 17, respectively.

(2) The Age Discrimination in Employment Act of 1967 is further amended by adding immediately after section 14 the following new section:

"NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 15. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units in the government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on age.

"(b) Except as otherwise provided in this subsection, the Civil Service Commission is authorized to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Civil Service Commission shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

"(1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit;

"(2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and

"(3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Civil Service Commission which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

"(c) Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act.

"(d) When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

"(e) Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law."

EFFECTIVE DATE

SEC. 29. (a) Except as otherwise specifically provided, the amendments made by this Act shall take effect on the first day of the first full month which begins after the date of the enactment of this Act.

(b) Notwithstanding subsection (a), on and after the date of the enactment of this Act the Secretary of Labor is authorized to prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WILLIAMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZATION FOR SECRETARY OF SENATE TO MAKE TECHNICAL AND CLERICAL CORRECTIONS IN ENGROSSMENT OF S. 2747

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of the bill, S. 2747, and that the bill be printed as passed in the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that calendar No. 523, S. 2727 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I simply wish to commend the Committee on Labor and Public Welfare, and particularly its able chairman, the distinguished Senator from New Jersey (Mr. WILLIAMS), for the outstanding manner in which the minimum wage proposal was handled.

This measure represents a matter of the highest priority insofar as the Senate is concerned. To the millions who are benefited will go vital relief in filling the need to maintain a minimum standard of living. Passage of the proposal represents a fine achievement for Senator WILLIAMS, for the committee and for the entire Senate.

I wish, too, to thank Senator JAVITS for his great leadership. As always, his cooperative efforts and enormous legislative skill were indispensable.

The Senate is indebted as well to the many members who joined with com-

ments, appraisals, and suggestions. But particularly the Senate is grateful to the cooperation exhibited by all in joining to assure such efficient action. Senator DOMINICK, Senator TAFT, Senator BUCKLEY, and others deserve special mention for aiding in these efforts.

Once again, however, Senator WILLIAMS has gained another magnificent achievement in his already abundant record book of public service.

Mr. WILLIAMS. Mr. President, final action on this major piece of legislation of such significant meaning to millions of working people would be incomplete without an expression of gratitude to the men and women of the Labor subcommittee staff who have worked so long, hard, and patiently to insure that all essential information and consultation were available to the Senate.

The members of the majority staff of the Subcommittee on Labor, Donald Elisburg, Jane Conley, Jeanette Smith, Joan Killiany, and Pat Garza, who performed so well, were directed to Gerald Feder in exemplary professional fashion.

My deep appreciation also extends to all the minority staff members, who were directed by Gene Mittelman with great dedication and skill.

ORDER OF BUSINESS—UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent, with the approval of the distinguished Republican leader and the chairman of the committee on the housing bill, that when the housing bill is called up it will be the pending business at the conclusion of the session of the Senate today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I am authorized by the distinguished majority leader to make the following unanimous-consent request.

I ask unanimous consent that on the housing bill there be a time limitation of 4 hours, that there be a limitation of 2 hours on each amendment, and that on any amendment there be a limitation of 30 minutes, and on any debatable motion or appeal, there be a limitation of 20 minutes with the exception of five amendments to be offered by the Senator from New York (Mr. JAVITS), on one of which there will be 2 hours, and on each of the others there will be 1 hour, and that the agreement be in the usual form.

Mr. TOWER. Mr. President, reserving the right to object, and I do not intend to object, did the Senator except the five amendments of the Senator from New York from the rule of germaneness?

Mr. ROBERT C. BYRD. I did. I did not have an opportunity to know about that. However, I have included them.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

The text of the unanimous-consent agreement is as follows:

Ordered, That, during the consideration of S. 3066, a bill to consolidate, simplify, and improve laws relative to housing and housing assistance, to provide Federal assistance in support of community development activities, and for other purposes, debate on any amendment (except five amendments to be offered by the Senator from New York (Mr. Javits), on one of which there shall be 2 hours debate, with 1 hour debate on each of the remaining four amendments none of which must be germane) shall be limited to 30 minutes, to be equally divided and controlled by the mover of the amendment and the manager of the bill, and that debate on any debatable motion or appeal shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided,* That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: *Provided further,* That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of the final passage of the said bill debate shall be limited to 4 hours, to be equally divided and controlled, respectively, by the majority and minority leaders, or their designees: *Provided,* That the said leaders, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion or appeal.

REFERRAL OF INDIAN SELF-DETERMINATION AND EDUCATIONAL REFORM ACT

Mr. JACKSON. Mr. President, I call up Calendar Order No. 658, S. 1017.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

Calendar No. 653, S. 1017, a bill to promote maximum Indian participation in the Government and education of the Indian people to provide for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish and carry out a national Indian education program; to encourage the establishment of local Indian school control; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes.

Mr. JACKSON. Mr. President, this is a matter involving Indian education. I have had a number of discussions with the various Indian groups, with the distinguished senior Senator from Massachusetts (Mr. KENNEDY), and with the chairman of the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, the junior Senator from South Dakota (Mr. ABOUREZK).

The facts are that there are some misunderstandings regarding the interpretations of the language in the bill, particularly with reference to title II, subsection (a).

There may be some other matters also in which there seems to be some divergence within the Indian community.

Under these circumstances—and all of us are desirous of getting a bill that will be representative certainly of the overwhelming majority of the Indian people—in order to achieve that purpose, it will be my suggestion that this matter be rereferred to the Committee on Interior and Insular Affairs for a period of 10 days, not including the time in which we will be in recess next week.

I have discussed this matter with the Senator from Texas.

Mr. TOWER. Mr. President, Senators FANNIN and MCCLURE would like to be notified on this matter. I would like to check to see if they are satisfied with this procedure before I agree to it.

Mr. JACKSON subsequently said: Mr. President, I have cleared this matter with the minority. I understand that there is no objection.

I would like first, Mr. President, to yield briefly to the senior Senator from Massachusetts (Mr. KENNEDY).

Mr. KENNEDY. Mr. President, I think this is a sound procedure that we are following in attempting to eliminate some of these questions that have been raised by a number of the Indian people.

We have had an opportunity to talk with the chairman of the Interior and Insular Affairs Committee and with the members of the staff about some of the questions that have been raised with me and with other Members of the Senate.

It will only go back to the committee for a period of 10 days. The chairman of the committee understands that there are a greater number of different provisions in the legislation and the Indian people want an expeditious consideration of those provisions.

Mr. President, there is strong and overwhelming support on the great majority of the legislation to be considered. However, there are certain provisions, particularly title II, subsection (a), that should be reviewed.

I am very hopeful and confident that the Indian peoples suggestions and recommendations will be reflected in the final results.

I want to thank the chairman of the Committee on Interior and Insular Affairs for taking this step and giving the oportunity to the Indian people to express their views on those particular measures.

I look forward to an early passage of this legislation and hopefully an early enactment of it into law.

Mr. JACKSON. Mr. President, may I just say that the distinguished Senator from Massachusetts has taken a great interest in this area over a long period of time. Both he and his staff have been most cooperative, and I do believe, as he does, that this will serve a useful purpose in clarifying some of the misunderstandings that have arisen.

Over all, I think we all agree that it is a good bill, but it is important that we clear up these matters in the committee room rather than on the floor of the Senate, so we will avoid further misunderstanding.

I thank the Senator from Massachusetts, and I likewise want to express my deep appreciation to the chairman of the subcommittee who is doing such a fine job in handling the Indian legislation before our committee, the distinguished junior Senator from South Dakota (Mr. ABOUREZK).

Mr. ABOUREZK. Mr. President, I would likewise like to say I think this is

tipped employees and the amount of tip credit, if any, which such employer is entitled to claim as to tipped employees. (Page 43 of the Committee Report)

The committee report is inaccurate on this point and nowhere during the 1966 amendments to the Fair Labor Standards Act does the legislative history reflect this intent of Congress. The existing language of the act was presented to the Senate by Senator Yarborough, then chairman of the Committee on Labor and Public Welfare. In discussing the language of section 3(n) on the tip allowance, Senator Yarborough stated:

As to the mechanics of the provision, the bill permits the employer to make an initial determination of the amount of tips, and, thus, avoid any interference in normal payroll practices. However, it affords safeguards to the employee by permitting him to show, if he can, to the satisfaction of the Secretary of Labor that the actual amount of tips received by him was less than the amount of tips determined by his employer and having his wage adjusted by the difference. CONGRESSIONAL RECORD, Vol. 112, No. 141, August 24, 1966, at p. 19621.

It seems apparent that the change proposed cannot be supported by legislative history as reflected in the committee report.

To place on the employer the burden of proving the amount of tips received by a tipped employee, as the committee report proposes to do, would create great practical problems for an employer and promote friction in employer-employee relations. Such a burden would be entirely unreasonable to place on an employer and, perhaps, subject an employer to lawsuits that he would be practically powerless to adequately defend. Would the committee chairman clarify the committee's intent with regard to this subject and provide the rationale for inserting such a procedure in the committee report?

Mr. WILLIAMS. The intent of this provision is to make clear where the burden of proof rests in legal proceedings. Under current law, the employee who can ill afford legal representation has erroneously been required by one court to meet the burden of proof to the court's satisfaction that the amount of tips he or she actually received was less than the amount claimed by the employer as a tip credit, Shultz against William Lee Hotel Co. The burden is clearly on the employer to provide to a court's satisfaction that the amount of tip credit claimed by such employer was actually received as tips by the employee.

If there was any confusion about the intent, if we went back to the debates of 1966, it should be very clear now that the burden is where it realistically should be. The employer claims the credit. He should have the burden of proving that he is entitled to the credit. That is where it lies.

Mr. TAFT. I cannot agree with the distinguished chairman on that subject. I think the legislative history is clear and having made the statement I made, I think it will leave it in the position I have described as a matter of legislative history.

Mr. DOMINICK. Mr. President, I believe that S. 2747, as reported, contains too many drastic revisions of the Fair Labor Standards Act, and passage by the Senate of the bill in its present form is unwarranted. As I stated last Thursday, and as Senators BEALL, TAFT, and myself pointed out in our minority views, the debate surrounding minimum wage legislation centers around four issues: wage rates, extension of coverage, repeal of exemptions and a differential wage structure for youth. Well, I believe we are close to agreement on wage rates, but the three remaining categories have been treated by the committee with little or no supporting data. Therefore, we introduced an amendment which would have raised the minimum wage—a raise that is needed, while leaving intact the present law with regard to exemptions and extensions.

As reported, the committee bill makes sweeping changes in the existing exemptions and in extensions of coverage. Much of this was done without any evidence of economic impact, and despite the fact that these exemptions and exceptions have much legislative history behind their creation.

Mr. President, the domestic coverage alone would add 1,018,000 employees to the minimum wage. This move was made by the committee despite the fact that it had been unable to obtain "available reliable information." The fact is Mr. President, that the impact of the Senate version will be $572 million in the first year alone for domestics.

I believe, as do many of my colleagues, that such a wage increase rather than benefiting the domestics will substantially reduce employment or the number of hours worked. The impact will be greatest in the South where 40 percent of all domestics are located. Moreover, the domestics situation is only one of the problems which would be created by passage of the committee bill.

For example, this bill would also repeal a variety of minimum wage and overtime exemptions which have been established with the specific intent of protecting small businesses and small farms from the adverse effects of minimum wage increases. Changes in the small business exemptions would affect only very small chain stores, most of which are located in small, rural communities primarily in the South and West. Pressures will be added to consolidate and shift location to larger urban areas. I believe such action on the part of Congress would be a serious mistake.

In addition, minimum wage coverage would be extended in agriculture by repeal of the exemption of "local, seasonal, hand harvest laborers." The impact of this change will fall heaviest on fruit and berry farms, which utilize large numbers of hand laborers during a short harvest season. Under the bill as reported, such laborers would be included in the "500 man-day test" by adding them to extended coverage to farms using "500 man-days" of labor during the peak quarter of the preceding calendar year. The equities of this situation are not balanced, for it penalizes a small farm requiring a large amount of labor during a brief harvest season, while another farm may escape coverage by utilizing the same amount annually but not concentrated in a peak season.

Further, Mr. President, overtime coverage would now be extended to Federal, State, and local government employees. It is estimated the net effect could amount to $305 million annually. Such costs would be inflicted in many cases on State and local governments, and would summarily override negotiated contracts.

I shall vote against the bill and urge my colleagues to do likewise.

Mr. BENTSEN. Mr. President, I want to make a few comments concerning section 28 of S. 2747.

Since March of 1972, I have been attempting to move a broad age discrimination bill through the Congress. I have introduced measures on this subject on three separate occasions; at one time my age discrimination bill passed the Senate by a vote of 86–0 as part of a minimum wage package. Unfortunately, that measure never reached the President.

This year I introduced S. 2380, which has been incorporated, virtually intact, as part of the bill before us. I am pleased to report that similar language is now also a part of the House minimum wage legislation.

When the Age Discrimination in Employment Act passed the Congress in 1967, it provided a specific exclusion from coverage for local, State, and Federal employees. In my view, that exclusion is unsupportable.

State and local government constitute perhaps the fastest growing areas of employment in our economy. The Federal Government has several million workers who are not covered. There is no reason why private enterprise should be subject to restrictions that are not applicable to the Federal Government.

Since I introduced my bill in 1972, I have received many letters from Government workers, relating to me their experiences with a bureaucracy which uses coercive tactics to induce retirement at an earlier age. I have also received letters from State and local employees, who indicate that they are discriminated against in the terms and conditions of their employment. This situation must not be allowed to continue.

This legislation addresses the plight of the disabled veteran who completed 12 months of study as a wastewater treatment operator only to find that a local city ordinance prohibited hiring anyone over 45. It speaks to the Pentagon's recently announced plan to compel retirements at the age of 55, a procedure so blatantly unlawful that it could be subject to a suit from an employee in private business. It speaks to employees of Federal agencies who may be subject to harassment from letters and memoranda, suggesting that they retire and promising pension benefits which may be less generous than expected.

What this legislation does is to give these workers coverage under the age discrimination law and to give them a procedure to pursue their complaints. The signing of this measure will climax a long effort to bring equity to a large

group of American workers. I urge the President to act swiftly and sign this provision into law.

Mr. BELLMON. Mr. President, there is no question that the minimum wage should be raised. For most workers there has not been an increase in over 5 years and $1.60 an hour will buy only about two-thirds as much as it would when that level was set.

The proposal before the Senate is basically the same one which was passed last year and vetoed by the President. My opposition to it now is the same as it was then. We do need to increase the minimum wage, but we should not make jobs more difficult to find for the Nation's young or handicapped workers.

That is what this bill would do, by repealing or drastically changing current exemptions and thereby extending coverage to almost 7 million additional employees. Among those affected would be employees of retail and service establishments grossing less than $250,000 annually; nursing home employees; seasonal workers; and local government employees.

Mr. President, the impact of this bill in Oklaoma would be felt especially by young people and handicapped workers now employed by small businessmen, nursing home operators and municipal governments. While the bill makes some less than the minimum wage to students provisions to allow employers to pay working part-time, these provisions have proven almost unworkable in the past, also the bill does not take into consideration the many nonstudent teenagers who need to earn money.

If this bill is enacted in its present form, it would prevent thousands of young people from holding jobs and make the youth unemployment rate, already almost 17 percent, go ever higher.

This legislation is an economic threat to small business, hard-pressed cities and towns, and those trying to enter the job market. Therefore, I cannot in good conscience support it.

The House is working on its own minimum wage bill, and any legislation passed by the Senate will go to a joint conference committee. I am hopeful that satisfactory legislation can be worked out during this session so that the long overdue increase in the minimum wage can be achieved without imposing additional hardships on both employers and employees. I therefore urge the Senate to reject S. 2747 in its present form.

Mr. DOLE. Mr. President, for almost 3 years, the Nation has been living with economic controls. Invoked in August of 1971, under authorities granted through the Economic Stabilization Act, the represented an unprecedented experience for the American people—wage and price controls in peacetime.

In 1971, and on a temporary basis, a controls policy had some justification and the freeze which was invoked initially had some good results. But much has happened since then, by way of market distortions and dislocations, which convinces me that the economic stabilization act should be allowed to pass into history when its expiration date arrives on April 30.

MARKET DISTORTIONS

In the intervening days between now and then, however, I believe we can act to rectify some of the problems which controls have caused and to smooth out some of the distortions in the market which have accompanied them. In the case of many commodities, it seems, the market mechanisms have failed to function properly. Supply and demand, in some cases, no longer seem to relate directly to price. Retail prices rise even as wholesale prices fall, in many instances, and a free market violated by undue governmental restraints, no longer shows an ability to respond to traditional market forces.

It was in an effort to remedy some of the problems caused by the controls of the last 3 years that I had intended to offer an amendment today to S. 2747.

ASSURE ADEQUATE SUPPLY

The amendment I sent to the desk yesterday was proposed in order to provide some assurance to the American people that they will continue to have a supply of hamburger and other meat products, and at a price that is within their means.

Presently retail prices for meat products are hitting all-time highs. In particular the price of hamburger in Washington's suburban grocery stores the past few days hit $1.09 to $1.19 per pound. At the same time live cattle prices have dropped 12 cents per pound. I submit a table for insertion in the RECORD which shows the increase in hamburbger prices in comparison with the prices paid to cattlemen for their animals.

The PRESIDING OFFICER. Without objection, the table will be printed in the RECORD.

(See exhibit 1.)

HAMBURGER PRICE RISE

Mr. DOLE. The housewives know the prices of meat in the grocery store. But some of them still think, mistakenly, that cattlemen are responsible for it and that cattlemen are still getting the prices for cattle that they got last summer.

Back then, Washington supermarkets were selling hamburger for 85 to 90 cents per pound. Last week in Washington, the price of hamburger hit $1.19 per pound. One store sells 5-pound rolls of hamburger which are now priced over $5 for the first time—at $5.25. Hamburger was not featured in a single newspaper ad last week. It is no wonder why.

Last summer when grocers were selling hamburger for 85 cents a pound, live cattle brought 52 to 55 cents a pound. Today, when live cattle are going for 41 to 43 cents per pound, they are selling hamburger for $1.19 per pound.

RETAIL RISE WHOLESALE DECLINE

Grocers, like any other businessmen, are entitled to a fair profit. But this is ridiculous. Especially so when cattlemen are losing from $80 to $100 a head on every animal they sell to the packer. The price of live cattle has fallen over 12 cents a pound since last August. But over the same time period, hamburger has gone up 29 cents and steaks and roasts, in fact all cuts of beef, have gone up or at least held constant. None have gone down.

Hamburger—a staple in most American households—is not even featured in advertisements in Washington papers any more, since it went over $1 per pound.

Steak prices have fluctuated more—but are seldom featured items in newspaper grocery ads.

All these price distortions point up the fact that a very finely tuned machine—our cattle and beef production and distribution system—has been thrown off kilter. We have not recovered from it yet and now energy problems and trucker protests have further delayed a return to anything like a normal situation.

LIMIT GROCERS MARGIN ON BEEF

Mr. President, the amendment that I proposed to the minimum wage bill (S. 2747) would require the Cost of Living Council to oversee the pricing practices of our retail grocers. The retail grocers would be limited to the same margin they were charging in the 12-month period prior to the imposition of price ceilings and controls, March 29, 1973. This period, April 1, 1972, to March 31, 1973, will be a fair period since it was prior to the distortions we have experienced due to those controls. The housewives are entitled to the protection this amendment will provide, and it will allow them to continue purchasing their hamburger and other beef products, which is essential in maintaining the beef production of the Nation.

THREAT TO SUPPLY

The high retail hamburger prices are causing housewives to purchase other food. This reduction in retail beef sales and depressed cattle prices, according to USDA, is causing a reduction in the number of cattle being produced in the Nation and some of the feedlots are being forced to close because of the adverse cost ratio of feed cost to depressed live cattle markets.

Our housewives deserve the protection of this amendment which will require hamburger prices to reflect the depressed cattle prices we are currently experiencing. Since the amendment is not germane to (S. 2747) I will not call it up. It is my hope, however, the amendment can be dealt with soon.

EXHIBIT 1

COMPARISON PRICES

	1967	1970	1972	Summer 1973	March 1974
Choice steers, Omaha (hundredweight)	$25.27	$29.34	$35.83	$53.61	$41.50
Hamburger (per pound)	.60	.72	.79	.90	1.19
Round steak (per pound)	.99	1.17	1.35	1.69	1.69
Chuck roast (per pound)	.64	.75	.85	1.17	1.19

Source: USDA Economic Research Service.

Mr. WILLIAMS. Mr. President, between the filing of the committee report and the beginning of the debate on S. 2747, a number of questions have been raised with me as floor manager of the bill, by some of my colleagues regarding the intent of certain provisions of the Fair Labor Standards Act as it would be amended by this legislation.

One of these questions relate to the new special provisions in section 13(b)

sense. Busing should not be the first tool of education. It should be a final tool.

Mr. Chairman, as I said earlier, this bill is one of the most important we will consider. We should seek continually to provide a better funding formula whereby children who need improved education will receive it, to continue in a sensible manner the impact aid program and to recognize the use of the schoolbus for what it is, a medium for transporting to the nearest acceptable school. When we do this we will be doing a realistic job for education and for the future of our Nation.

Mr. BADILLO. Mr. Chairman, I rise in support of the amendment offered by my colleague from New York.

Mr. Chairman, I regret that the debate on the Elementary and Secondary Education Amendments of 1974 has degenerated into a scramble to see which of the many formulas offers each Member the most money for his congressional district. Of course every Member is concerned about the Federal dollars available for the education of his constituents. And rightly so.

But, Mr. Chairman, we have lost sight of what this bill is really all about, and that is children. These dollar figures are essentially meaningless unless we translate them into the human beneficiaries at the end of the legislative process by which we will decide how to allocate the money in this program.

Under the committee formula, the majority of school districts in the United States will be able to add children to their eligible rolls. This is well and good. The more youngsters we can bring quality education to, the better. However, let us also not lose sight of the fact that the committee formula also will force many large cities and some smaller counties around the country to drop children who have already begun to benefit from title I programs. That is where our focus should be, not on whether New York gets x number of dollars compared to St. Louis or San Francisco.

Mr. Chairman, some 90,000 children will be dropped from title I compensatory programs in New York City if the formula in H.R. 69 is adopted. Nothing could be crueler on our part to hold out the educational enrichment made possible through ESEA to youngsters in the schools and then, after a few years during which results actually appear in an upturn in citywide reading scores, withdraw funds so drastically that fully one-third of all New York City enrollees in title I programs will receive these benefits no more.

Mr. Chairman, if we could find the will to fully fund the programs authorized by ESEA, we could do the cause of education in this country a great service. But the realities of the underfunding should stimulate us to find a way to continue serving all the children who are presently in title I programs and slowly expand the pool of eligibles as appropriations increase. That in fact was the thrust of the 1970 amendments to this bill in the stipulation that children from families with less than $2,000 in income would continue to be served first as children from families with higher incomes would hopefully be added to the program as funds became available. That 1970 action was fully in accord with the original intent of the 1965 act to provide support for local education agencies in areas with high concentrations of poor children.

The committee formula would undo this effort. While forcing the dropping of thousands of urban children from the program, H.R. 69 would provide dramatic increases in funds for some of the wealthiest counties in the Nation. According to charts placed in the RECORD yesterday, Montgomery County in Maryland would receive about 50 percent more money next year than it is getting for title I programs this year. Fairfax County in Virginia would receive a healthy 33 percent boost, DuPage County in Illinois gains a staggering 67 percent, Howard County in Maryland will more than double its 1974 entitlement, and Waukesha County, Wis., would go up by more than 50 percent. Other affluent counties will gain in the area of 25 to 35 percent over present title I funds.

Mr. Chairman, certainly there are children in those wealthy counties with learning disabilities just as there are in the inner cities. I hope the Congress will do more for all the students in the country. But I urge my colleagues to remember that when they consider voting for more ESEA funds to flow into their schools that these increases will be at the expense of children in other parts of the country.

If we keep in mind what this program is all about, I believe that we can see the equity and the human component in the gentleman's amendment.

Mr. Chairman, I urge adoption of the amendment.

Mrs. SCHROEDER. Mr. Chairman, I suppose I have as great a personal interest in the subject matter of these amendments as any Member of Congress. Since June 1973, when the Supreme Court decided the case of Keyes against School District No. 1, the district I represent has been faced with the need to devise a remedy for what the court concluded had been at least a decade of unconstitutional discrimination against the 14 percent of its elementary and secondary public school pupils who are black and the 20 percent who are Hispano Americans.

I am supporting the National Educational Opportunities Act amendment to H.R. 69 as the only positive measure this Congress has devised to meet the problems of segregated and substandard education. My colleagues Mr. ANDERSON, Mr. PREYER and Mr. UDALL have worked long and hard to develop this legislation which gives local communities and their school systems the primary responsibility, along with financial and other incentives, for developing long-range plans for school desegregation, rather than relying on HEW and the courts. Under this proposal, busing could only be implemented as a temporary, last resort measure while less disruptive, long-range desegregation plans are developed.

Although this legislation is far from perfect—for example, I feel that the 10-year time period which States are given to implement their plans is entirely too long—it is a step in the right direction. Congress for too long has failed to provide sensible guidelines and responsible leadership in the field of education and race relations. Instead, we have dumped the total responsibility for dealing with the issue in the laps of the courts.

It is time for the Congress to take the problem in hand and take this first step in setting a positive, comprehensive policy. Up to now the only alternatives that have been offered in Congress have been negatively sweeping proposals such as the other amendment before us today offered by Mr. ESCH, which would totally prohibit busing as a remedy, while offering no positive alternatives for better ways to achieve desegregation. The Supreme Court has wisely recognized that rights and remedies are indivisible. To totally prohibit the remedy when no other adequate relief is available, is to deny the right itself.

PARLIAMENTARY INQUIRY

Mr. PERKINS. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. PERKINS. Mr. Chairman, inasmuch as the vote has been announced on the Esch amendment, I would like to make an inquiry as to whether further amendments to title I are in order or will be in order tomorrow when we take up further consideration of this bill?

The CHAIRMAN. In view of the adoption of the Esch amendment, all further action on title I is precluded.

Mr. PERKINS. So when we meet tomorrow we will go into a new title II?

The CHAIRMAN. When the committee resumes sitting tomorrow the Clerk will begin reading on line 19 on page 58.

Mr. PERKINS. I thank the Chairman.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. O'NEILL) having assumed the chair, Mr. PRICE of Illinois, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 69) to extend and amend the Elementary and Secondary Education Act of 1965, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks in the RECORD on title I and on the Esch amendment.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

CONFERENCE REPORT ON S. 2747, FAIR LABOR STANDARDS AMENDMENTS OF 1974

Mr. PERKINS submitted the following conference report and statement on the bill (S. 2747) to amend the Fair Labor Standards Act of 1938 to increase the

minimum wage rate under that act, to expand the coverage of the act, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 93-953)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2747) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that Act, to expand the coverage of the Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

SHORT TITLE; REFERENCES TO ACT

SECTION 1. (a) This Act my be cited as the "Fair Labor Standards Amendments of 1974".

(b) Unless otherwise specified, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the section or other provision amended or repealed is a section or other provision of the Fair Labor Standards Act of 1938 (29 U.S.C. 201-219).

INCREASE IN MINIMUM WAGE RATE FOR EMPLOYEES COVERED BEFORE 1966

SEC. 2. Section 6 (a) (1) is amended to read as follows:

"(1) not less than $2 an hour during the period ending December 31, 1974, not less than $2.10 an hour during the year beginning January 1, 1975, and not less than $2.30 an hour after December 31, 1975, except as otherwise provided in this section;".

INCREASE IN MINIMUM WAGE RATE FOR NONAGRICULTURAL EMPLOYEES COVERED IN 1966 AND 1974

SEC 3. Section 6(b) is amended (1) by asserting ", title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974" after "1966", and (2) by striking out paragraphs (1) through (5) and inserting in lieu thereof the following:

"(1) not less than $1.90 an hour during the period ending December 31, 1974,

"(2) not less than $2 an hour during the year beginning January 1, 1975,

"(3) not less than $2.20 an hour during the year beginning January 1, 1976, and

"(4) not less than $2.30 an hour after December 31, 1976."

INCREASE IN MINIMUM WAGE RATE FOR AGRICULTURAL EMPLOYEES

SEC. 4. Section 6(a)(5) is amended to read as follows:

"(5) if such employee is employed in agriculture, not less than—

"(A) $1.60 an hour during the period ending December 31, 1974,

"(B) $1.80 an hour during the year beginning January 1, 1975,

"(C) $2 an hour during the year beginning January 1, 1976,

"(D) $2.20 an hour during the year beginning January 1, 1977, and

"(E) $2.30 an hour after December 31, 1977."

INCREASE IN MINIMUM WAGE RATES FOR EMPLOYEES IN PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 5. (a) Section 5 is amended by adding at the end thereof the following new subsection:

"(e) The provisions of this section, section 6(c), and section 8 shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands, (2) by an establishment which is a hotel, motel, or restaurant, or (3) by any other retail or service establishment which employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs. The minimum wage rate of such an employee shall be determined under this Act in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this Act. As used in the preceding sentence, the term 'State' does not include a territory or possession of the United States.".

(b) Effective on the date of the enactment of the Fair Labor Standards Amendments of 1974, subsection (c) of section 6 is amended by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

"(2) Except as provided in paragraphs (4) and (5), in the case of any employee who is covered by such a wage order on the date of enactment of the Fair Labor Standards Amendments of 1974 and to whom the rate or rates prescribed by subsection (a) or (b) would otherwise apply, the wage rate applicable to such employee shall be increased as follows:

"(A) Effective on the effective date of the Fair Labor Standards Amendments of 1974, the wage order rate applicable to such employee on the day before such date shall—

"(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

"(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour.

"(B) Effective on the first day of the second and each subsequent year after such date, the highest wage order rate applicable to such employees on the date before such first day shall—

"(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

"(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour.

In the case of any employee employed in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5, to whom the rate or rates prescribed by subsection (a)(5) would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the increases prescribed by this paragraph shall be applied to the sum of the wage rate in effect under such wage order and the amount by which the employee's) hourly wage rate is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order.

"(3) In the case of any employee employed in Puerto Rico or the Virgin Islands to whom this section is made applicable by the amendments made to this Act by the Fair Labor Standards Amendments of 1974, the Secretary shall, as soon as practicable after the date of enactment of the Fair Labor Standards Amendments of 1974, appoint a special industry committee in accordance with section 5 to recommend the highest minimum wage rate or rates, which shall be not less than 60 per centum of the otherwise applicable minimum wage rate in effect under subsection (b) or $1.00 an hour, whichever is greater, to be applicable to such employee in lieu of the rate or rates prescribed by subsection (b). The rate recommended by the special industry committee shall (A) be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation, but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1974, and (B) except in the case of employees of the government of Puerto Rico or any political subdivision thereof, be increased in accordance with paragraph (2)(B).

"(4)(A) Notwithstanding paragraph (2)(A) or (3), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(A) or (3) of this subsection, shall, on the effective date of the wage increase under paragraph (2)(A) or of the wage rate recommended under paragraph (3), as the case may be, be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) or $1.00, whichever is higher.

"(B) Notwithstanding paragraph (2)(B), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(B), shall, on and after the effective date of the first wage increase under paragraph (2)(B), be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) or $1.00, whichever is higher.

"(5) If the wage rate of an employee is to be increased under this subsection to a wage rate which equals or is greater than the wage rate under subsection (a) or (b) which, but for paragraph (1) of this subsection, would be applicable to such employee, this subsection shall be inapplicable to such employee and the applicable rate under such subsection shall apply to such employee.

"(6) Each minimum wage rate prescribed by or under paragraph (2) or (3) shall be in effect unless such minimum wage rate has been superseded by a wage order (issued by the Secretary pursuant to the recommendation of a special industry committee convened under section 8) fixing a higher minimum wage rate."

(c)(1) The last sentence of section 8(b) is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following: "except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 6(a) or 6(b), which would be applicable but for section 6(c), unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage."

(2) The third sentence of section 10(a) is amended by inserting after "modify" the following: "(including provision for the payment of an appropriate minimum wage rate)".

(d) Section 8 is amended (1) by striking out "the minimum wage prescribed in paragraph (1) of section 6(a) in each such industry" in the first sentence of subsection (a) and inserting in lieu thereof "the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 6(a) but for section 6(c)", (2) by striking out "the minimum wage rate prescribed in paragraph (1) of section 6(a)" in the last sentence of subsection (a) and inserting in lieu thereof "the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 6(a)", and (3) by striking out "prescribed in paragraph (1) of section 6(a)" in subsection (c) and inserting in lieu thereof "in effect under paragraph (1) or (5) of section 6(a) (as the case may be)".

FEDERAL AND STATE EMPLOYEES

SEC. 6. (a)(1) Section 3(d) is amended to read as follows:

"(d) 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than

when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

(2) Section 3(e) is amended to read as follows:

"(e)(1) Except as provided in paragraphs (2) and (3), the term 'employee' means any individual employed by an employer.

"(2) In the case of an individual employed by a public agency such term means—

"(A) any individual employed by the Government of the United States—

"(i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),

"(ii) in any executive agency (as defined in section 105 of such title),

"(iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,

"(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

"(v) in the Library of Congress;

"(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

"(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

"(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

"(ii) who—

"(I) holds a public elective office of that State, political subdivision, or agency,

"(II) is selected by the holder of such an office to be a member of his personal staff,

"(III) is appointed by such an officeholder to serve on a policymaking level, or

"(IV) who is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office.

"(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.".

(3) Section 3(h) is amended to read as follows:

"(h) 'Industry' means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.".

(4) Section 3(r) is amended by inserting "or" at the end of paragraph (2) and by inserting after that paragraph the following new paragraph:

"(3) in connection with the activities of a public agency,".

(5) Section 3(s) is amended—

(A) by striking out in the matter preceding paragraph (1) "including employees handling, selling, or otherwise working on goods" and inserting in lieu thereof "or employees handling, selling, or otherwise working on goods or materials",

(B) by striking out "or" at the end of paragraph (3),

(C) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; or",

(D) by adding after paragraph (4) the following new paragraph:

"(5) is an activity of a public agency.", and

(E) by adding after the last sentence the following new sentence: "The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.".

(6) Section 3 is amended by adding after subsection (w) the following:

"(x) 'Public agency' means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency.".

(b) Section 4 is amended by adding at the end thereof the following new subsection:

"(f) The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this Act with respect to such individuals. Notwithstanding any other provision of this Act, or any other law, the Civil Service Commission is authorized to administer the provisions of this Act with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 16(b) of this Act.".

(c)(1)(A) Effective January 1, 1975, section 7 is amended by adding at the end thereof the following new subsection:

"(k) No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

"(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed 240 hours; or

"(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 240 hours bears to 28 days,

compensation at a rate not less than one and one-half times the regular rate at which he is employed."

(B) Effective January 1, 1976, section 7(k) is amended by striking out "240 hours" each place it occurs and inserting in lieu thereof "232 hours".

(C) Effective January 1, 1977, such section is amended by striking out "232 hours" each place it occurs and inserting in lieu thereof "216 hours".

(D) Effective January 1, 1978, such section is amended—

(i) by striking out "exceed 216 hours" in paragraph (1) and inserting in lieu thereof "exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975"; and

(ii) by striking out "as 216 hours bears to 28 days" in paragraph (2) and inserting in lieu thereof "as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days".

(2)(A) Section 13(b) is amended by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or" and by adding after that paragraph the following new paragraph:

"(20) any employee of a public agency who is employed in fire protection or law enforcement activities (including security personnel in correctional institutions);".

(B) Effective January 1, 1975, section 13(b)(20) is amended to read as follows:

"(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or".

(3) The Secretary of Labor shall in the calendar year beginning January 1, 1976, conduct (A) a study of the average number of hours in tours of duty in work periods in the preceding calendar year of employees (other than employees exempt from section 7 of the Fair Labor Standards Act of 1938 by section 13(b)(20) of such Act) of public agencies who are employed in fire protection activities, and (B) a study of the average number of hours in tours of duty in work periods in the preceding calendar year of employees (other than employees exempt from section 7 of the Fair Labor Standards Act of 1938 by section 13(b)(20) of such Act) of public agencies who are employed in law enforcement activities (including security personnel in correctional institutions). The Secretary shall publish the results of each such study in the Federal Register.

(d)(1) The second sentence of section 16(b) is amended to read as follows: "Action to recover such liability may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.".

(2)(A) Section 6 of the Portal-to-Portal Pay Act of 1947 is amended by striking out the period at the end of paragraph (c) and by inserting in lieu thereof a semicolon and by adding after such paragraph the following:

"(d) with respect to any cause of action brought under section 16(b) of the Fair Labor Standards Act of 1938 against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.".

(B) Section 11 of such Act is amended by striking out "(b)" after "section 16".

DOMESTIC SERVICE WORKERS

SEC. 7. (a) Section 2(a) is amended by inserting at the end the following new sentence: "That Congress further finds that the employment of persons in domestic service in households affects commerce."

(b)(1) Section 6 is amended by adding after subsection (e) the following new subsection:

"(f) Any employee—

"(1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under section 6(b) unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act constitute wages for the purposes of title II of such Act, or

"(2) who in any workweek—

"(A) is employed in domestic service in one or more households, and

"(B) is so employed for more than 8 hours in the aggregate, shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under section 6(b)."

(2) Section 7 is amended by adding after

the subsection added by section 6(c) of this Act the following new subsection:

"(l) No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a)."

(3) Section 13(a) is amended by adding at the end the following new paragraph:

"(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary)."

(4) Section 13(b) is amended by adding after the paragraph added by section 6(c) the following new paragraph:

"(21) any employee who is employed in domestic service in a household and who resides in such household; or".

RETAIL AND SERVICE ESTABLISHMENTS

SEC. 8. (a) Effective January 1, 1975, section 13(a)(2) (relating to employees of retail and service establishments) is amended by striking out "$250,000" and inserting in lieu thereof "$225,000".

(b) Effective January 1, 1976, such section is amended by striking out "$225,000" and inserting in lieu thereof "$200,000".

(c) Effective January 1, 1977, such section is amended by striking out "or such establishment has an annual dollar volume of sales which is less than $200,000 (exclusive of excise taxes at the retail level which are separately stated)".

TOBACCO EMPLOYEES

SEC. 9. (a) Section 7 is amended by adding after the subsection added by section 7(b)(2) of this Act the following:

"(m) For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

"(1) is employed by such employer—

"(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco.

"(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

"(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

"(2) receives for—

"(A) such employment by such employer which is in excess of ten hours in any workday, and

"(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.".

(b)(1) Section 13(a)(14) is repealed.

(2) Section 13(b) is amended by adding after the paragraph added by section 7(b)(4) of this Act the following new paragraph:

"(22) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco; or".

TELEGRAPH AGENCY EMPLOYEES

SEC. 10. (a) Section 13(a)(11) (relating to telegraph agency employees) is repealed.

(b)(1) Section 13(b) is amended by adding after the paragraph added by section 9(b)(2) of this Act the following new paragraph:

"(23) any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under paragraph (2) of subsection (a) with respect to whom the provisions of sections 6 and 7 would not otherwise apply, who is engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month, and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, section 13(b)(23) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(3) Effective two years after such date, section 13(b)(23) is repealed.

SEAFOOD CANNING AND PROCESSING EMPLOYEES

SEC. 11. (a) Section 13(b)(4) (relating to fish and seafood processing employees) is amended by inserting "who is" after "employee", and by inserting before the semicolon the following: ", and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, section 13(b)(4) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(c) Effective two years after such date, section 13(b)(4) is repealed.

NURSING HOME EMPLOYEES

SEC. 12. (a) Section 13(b)(8) (insofar as it relates to nursing home employees) is amended by striking out "any employee who (A) is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises" and the remainder of that paragraph.

(b) Section 7(j) is amended by inserting after "a hospital" the following: "or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises".

HOTEL, MOTEL, AND RESTAURANT EMPLOYEES AND TIPPED EMPLOYEES

SEC. 13. (a) Section 13(b)(8) (insofar as it relates to hotel, motel, and restaurant employees) (as amended by section 12) is amended (1) by striking out "any employee" and inserting in lieu thereof "(A) any employee (other than an employee of a hotel or motel who performs maid or custodial services) who is", (2) by inserting before the semicolon the following: "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less that one and one-half times the regular rate at which he is employed", and (3) by adding after such section the following:

"(B) any employee of a hotel or motel who performs maid or custodial services and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, subparagraphs (A) and (B) of section 13(b)(8) are each amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-six hours".

(c) Effective two years after such date, subparagraph (B) of section 13(b)(8) is amended by striking out "forty-six hours" and inserting in lieu thereof "forty-four hours".

(d) Effective three years after such date, subparagraph (B) of section 13(b)(8) is repealed and such section is amended by striking out "(A)".

(e) The last sentence of section 3(m) is amended to read as follows: "In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.".

SALESMEN, PARTSMEN, AND MECHANICS

SEC. 14. Section 13(b)(10) (relating to salesmen, partsmen, and mechanics) is amended to read as follows:

"(10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

"(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or".

FOOD SERVICE ESTABLISHMENT EMPLOYEES

SEC. 15. (a) Section 13(b)(18) (relating to food service and catering employees) is amended by inserting immediately before the semicolon the following: "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, such section is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(c) Effective two years after such date, such section is repealed.

BOWLING EMPLOYEES

SEC. 16. (a) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, section 13(b)(19) (relating to employees of bowling establishments) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(b) Effective two years after such date, such section is repealed.

SUBSTITUTE PARENTS FOR INSTITUTIONALIZED CHILDREN

SEC. 17. Section 13(b) is amended by inserting after the paragraph added by sec-

tion 10(b)(1) of this Act the following new paragraph:

"(24) any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children—

"(A) who are orphans or one of whose natural parents is deceased, or

"(B) who are enrolled in such institution and reside in residential facilities of the institution,

while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or".

EMPLOYEES OF CONGLOMERATES

SEC. 18. Section 13 is amended by adding at the end thereof the following:

"(g) The exemption from section 6 provided by paragraphs (2) and (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support, the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated), except that the exemption from section 6 provided by paragraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) if it were in an enterprise described in section 3(s).".

SEASONAL INDUSTRY EMPLOYEES

SEC. 19. (a) Section 7(c) and 7(d) are each amended—

(1) by striking out "ten workweeks" and inserting in lieu thereof "seven workweeks", and

(2) by striking out "fourteen workweeks" and inserting in lieu thereof "ten workweeks".

(b) Section 7(c) is amended by striking out "fifty hours" and inserting in lieu thereof "forty-eight hours".

(c) Effective January 1, 1975, sections 7(c) and 7(d) are each amended—

(1) by striking out "seven workweeks" and inserting in lieu thereof "five workweeks", and

(2) by striking out "ten workweeks" and inserting in lieu thereof "seven workweeks".

(d) Effective January 1, 1976, sections 7(c) and 7(d) are each amended—

(1) by striking out "five workweeks" and inserting in lieu thereof "three workweeks", and

(2) by striking out "seven workweeks" and inserting in lieu thereof "five workweeks".

(e) Effective December 31, 1976, sections 7(c) and 7(d) are repealed.

COTTON GINNING AND SUGAR PROCESSING EMPLOYEES

SEC. 20. (a) Section 13(b)(15) is amended to read as follows:

"(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or".

(b)(1) Section 13(b) is amended by adding after paragraph (24) the following new paragraph:

"(25) any employee who is engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities and who receives compensation for employment in excess of—

"(A) seventy-two hours in any workweek for not more than six workweeks in a year,

"(B) sixty-four hours in any workweek for not more than four workweeks in that year,

"(C) fifty-four hours in any workweek for not more than two workweeks in that year, and

"(D) forty-eight hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective January 1, 1975, section 13(b)(25) is amended—

(A) by striking out "seventy-two" and inserting in lieu thereof "sixty-six";

(B) by striking out "sixty-four" and inserting in lieu thereof "sixty";

(C) by striking out "fifty-four" and inserting in lieu thereof "fifty";

(D) by striking out "and" at the end of subparagraph (C); and

(E) by striking out "forty-eight hours in any other workweek in that year," and inserting in lieu thereof the following: "forty-six hours in any workweek for not more than two workweeks in that year, and

"(E) forty-four hours in any other workweek in that year,".

(3) Effective January 1, 1976, section 13(b)(25) is amended—

(A) by striking out "sixty-six" in subparagraph (A) and inserting in lieu thereof "sixty";

(B) by striking out "sixty" in subparagraph (B) and inserting in lieu thereof "fifty-six";

(C) by striking out "fifty" nad inserting in lieu thereof "forty-eight";

(D) by striking out "forty-six" and inserting in lieu thereof "forty-four"; and

(E) by striking out "forty-four" in subparagraph (E) and inserting in lieu thereof "forty".

(c)(1) Section 13(b) is amended by adding after paragraph (25) the following new paragraph:

"(26) any employee who is engaged in the processing of sugar beets, sugar beet molasses, or sugarcane into sugar (other than refined sugar) or syrup and who receives compensation for employment in excess of—

"(A) seventy-two hours in any workweek for not more than six workweeks in a year,

"(B) sixty-four hours in any workweek for not more than four workweeks in that year,

"(C) fifty-four hours in any workweek for not more than two workweeks in that year, and

"(D) forty-eight hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective January 1, 1975, section 13(b)(26) is amended—

(A) by striking out "seventy-two" and inserting in lieu thereof "sixty-six";

(B) by striking out "sixty-four" and inserting in lieu thereof "sixty";

(C) by striking out "fifty-four" and inserting in lieu thereof "fifty";

(D) by striking out "and" at the end of subparagraph (C); and

(E) by striking out "forty-eight hours in any other workweek in that year," and inserting in lieu thereof the following: "forty-six hours in any workweek for not more than two workweeks in that year, and

"(E) forty-four hours in any other workweek in that year,".

(3) Effective January 1, 1976, section 13(b)(26) is amended—

(A) by striking out "sixty-six" in subparagraph (A) and inserting in lieu thereof "sixty";

(B) by striking out "sixty" in subparagraph (B) and inserting in lieu thereof "fifty-six";

(C) by striking out "fifty" and inserting in lieu thereof "forty-eight";

(D) by striking out "forty-six" and inserting in lieu thereof "forty-four"; and

(E) by striking out "forty-four" in subparagraph (E) and inserting in lieu thereof "forty".

LOCAL TRANSIT EMPLOYEES

SEC. 21. (a) Section 7 is amended by adding after the subsection added by section 9(a) of this Act the following new subsection:

"(n) In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment."

(b)(1) Section 13(b)(7) (relating to employees of street, suburban or interurban electric railways, or local trolley or motorbus carriers) is amended by striking out ", if the rates and services of such railway or carrier are subject to regulation by a State or local agency" and inserting in lieu thereof the following: "(regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(2) Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, such section is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(3) Effective two years after such date, such section is repealed.

COTTON AND SUGAR SERVICES EMPLOYEES

SEC. 22. Section 13 is amended by adding after the subsection added by section 18 the following:

"(h) The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

"(1) is employed by such employer—

"(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

"(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

"(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

"(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

"(2) receives for—

"(A) such employment by such employer which is in excess of ten hours in any workday, and

"(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 7.".

OTHER EXEMPTIONS

SEC. 23. (a)(1) Section 13(a)(9) (relating to motion picture theater employees) is repealed

(2) Section 13(b) is amended by adding after paragraph (26) the following new paragraph:

"(27) any employee employed by an establishment which is a motion picture theater; or".

(b)(1) Section 13(a)(13) (relating to small logging crews) is repealed.

(2) Section 13(b) is amended by adding after paragraph (27) the following new paragraph:

"(28) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight.".

(c) Section 13(b)(2) (insofar as it relates to pipeline employees) is amended by inserting after "employer" the following: "engaged in the operation of a common carrier by rail and".

EMPLOYMENT OF STUDENTS

SEC. 24. (a) Section 14 is amended by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following:

"SEC. 14. (a) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

"(b)(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

"(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

"(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this Act before the effective date of the Fair Labor Standards Amendments of 1974—

"(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

"(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

"(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater;

"(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

"(I) the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments

"(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

"(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

"(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (III) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term 'student hours of employment' means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

"(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 6(a)(5) or not less than $1.30 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

"(3) The Secretary to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.30 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

"(4)(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

"(B) If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed four—

"(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

"(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

"(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate."

(b) Section 14 is further amended by redesignating subsection (d) as subsection (c) and by adding at the end the following new subsection:

"(d) The Secretary may by regulation or order provide that sections 6 and 7 shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws."

(c) Section 4(d) is amended by adding at the end thereof the following new sentence: "Such report shall also include a summary of the special certificates issued under section 14(b)."

CHILD LABOR

SEC. 25. (a) Section 12 (relating to child labor) is amended by adding at the end thereof the following new subsection:

"(d) In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age."

(b) Section 13(c)(1) (relating to child labor in agriculture) is amended to read as follows:

"(c)(1) Except as provided in paragraph (2), the provisions of section 12 relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

"(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of section 13(a)(6)(A)) required to be paid at the wage rate prescribed by section 6(a)(5),

"(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

"(C) is fourteen years of age or older.".

(c) Section 16 is amended by adding at the end thereof the following new subsection:

"(e) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, may be—

"(1) deducted from any sums owing by the United States to the person charged;

"(2) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

"(3) ordered by the court, in an action brought for a violation of section 15(a)(4), to be paid to the Secretary.

Any administrative determination by the Secretary of the amount of such penalty shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary. Sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provisions of section 2 of an Act entitled 'An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes' (29 U.S.C. 9a)."

SUITS BY SECRETARY FOR BACK WAGES

SEC. 26. The first three sentences of section 16(c) are amended to read as follows: "The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) to bring an action by or on behalf of any employee and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 6 and 7 or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary."

ECONOMIC EFFECTS STUDIES

SEC. 27. Section 4(d) is amended by—

(1) inserting "(1)" immediately after "(d)".

(2) inserting in the second sentence after "minimum wages" the following: "and overtime coverage"; and

(3) by adding at the end thereof the following new paragraphs:

"(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 13 of this Act, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

"(3) The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 14 of this Act.".

AGE DISCRIMINATION

SEC. 28. (a)(1) The first sentence of section 11(b) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630(b)) is amended by striking out "twenty-five" and inserting in lieu thereof "twenty".

(2) The second sentence of section 11(b) of such Act is amended to read as follows: "The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United States, or a corporation wholly owned by the Government of the United States.".

(3) Section 11(c) of such Act is amended by striking out ", or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance".

(4) Section 11(f) of such Act is amended to read as follows:

"(f) The term 'employee' means an individual employed by any employer except that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy-making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision.".

(5) Section 16 of such Act is amended by striking out "$3,000,000" and inserting in lieu thereof "$5,000,000".

(b)(1) The Age Discrimination in Employment Act of 1967 is amended by redesignating sections 15 and 16, and all references thereto, as sections 16 and 17, respectively.

(2) The Age Discrimination in Employment Act of 1967 is further amended by adding immediately after section 14 the following new section:

"NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 15. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units in the government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on age.

"(b) Except as otherwise provided in this subsection, the Civil Service Commission is authorized to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Civil Service Commission shall issue such rules and regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

"(1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each department, agency, or unit referred to in subsection (a);

"(2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and

"(3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Civil Service Commission which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupa-

tional qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

"(c) Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act.

"(c) When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

"(e) Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law."

CARL D. PERKINS,
JOHN H. DENT,
DOMINICK V. DANIELS,
PHILLIP BURTON,
JOSEPH M. GAYDOS,
WILLIAM CLAY,
MARIO BIAGGI,
ALBERT H. QUIE,
JOHN N. ERLENBORN,
ORVAL HANSEN,
JACK F. KEMP,
ROBERT A. SAFASIN,
Managers on the Part of the House.

HARRISON A. WILLIAMS, JR.,
JENNINGS RANDOLPH,
CLAIBORNE PELL,
GAYLORD NELSON,
THOMAS F. EAGLETON,
HAROLD E. HUGHES,
WILLIAM D. HATHAWAY,
JACOB K. JAVITS,
RICHARD S. SCHWEIKER,
ROBERT TAFT, JR.,
ROBERT T. STAFFORD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2747) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that Act, to expand the coverage of the Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

INCREASE IN MINIMUM WAGE RATE FOR EMPLOYEES COVERED BEFORE 1966

The Senate bill increased the minimum hourly wage rate of employees covered by the Fair Labor Standards Act of 1938 (hereafter referred to as the "Act") before the amendments made by the Fair Labor Standards Amendments of 1966 as follows: Effective on the effective date of the 1974 Amendments, such wage rate was increased from $1.60 an hour to $2.00 an hour; and effective one year thereafter, such rate was increased from $2.00 an hour to $2.20 an hour.

Under the House amendment the minimum hourly wage rate for such employees was increased as follows: Effective on the effective date of the 1974 Amendments, such wage rate was increased from $1.60 an hour to $2.00 an hour; effective January 1, 1975, such rate was increased from $2.00 an hour to $2.10 an hour; and effective January 1, 1976, such rate was increased to $2.30 an hour.

The Senate receded.

INCREASE IN MINIMUM WAGE RATE FOR NONAGRICULTURAL EMPLOYEES COVERED IN 1966 AND 1974

The Senate bill increased the minimum hourly wage rate applicable to nonagricultural employees first covered by the Act by the 1966 and 1974 Amendments as follows: Effective on the effective date of the 1974 Amendments, such wage rate was increased from $1.60 an hour to $1.80 an hour; effective one year later, such rate was increased from $1.80 an hour to $2.00 an hour; and effective two years after such effective date, such rate was increased from $2.00 an hour to $2.20 an hour.

Under the House amendment the minimum hourly wage rate applicable to such nonagricultural employees was increased as follows: Effective on the effective date of the 1974 Amendments, such wage rate was increased from $1.60 an hour to $1.90 an hour; effective January 1, 1975, such rate was increased from $1.90 an hour to $2.00 an hour; and effective January 1, 1976, such rate was increased from $2.00 an hour to $2.20 an hour; and effective on January 1, 1977 such rate was increased from $2.20 an hour to $2.30 an hour.

The Senate receded.

INCREASE IN MINIMUM WAGE RATE FOR AGRICULTURAL EMPLOYEES

The Senate bill increased the minimum hourly wage rate applicable to agricultural employees as follows: Effective on the effective date of the 1974 Amendments, such wage rate was increased from $1.30 an hour to $1.60 an hour; effective one year after such effective date, such rate was increased from $1.60 an hour to $1.80 an hour; effective two years after such date, such rate was increased from $1.80 an hour to $2.00 an hour; and effective three years from such date, such rate was increased from $2.00 an hour to $2.20 an hour.

The House amendment increased the minimum hourly wage rate applicable to such employees as follows: Effective on the effective date of the 1974 Amendments, such wage rate was increased from $1.30 an hour to $1.60 an hour; effective January 1, 1975, such rate was increased from $1.60 an hour to $1.80 an hour; effective January 1, 1976, such rate was increased from $1.80 an hour to $2.00 an hour; effective January 1, 1977, such rate was increased from $2.00 an hour to $2.20 an hour; and effective January 1, 1978, such rate was increased from $2.20 an hour to $2.30 an hour.

The Senate receded.

OVERTIME EXEMPTION FOR POLICEMEN AND FIREMEN

Under the Senate bill a limited overtime exemption was authorized for policemen and firemen under employer-employee agreements providing a 28-day work period and if during such period such employees receive overtime compensation for employment in excess of—

(1) 192 hours during 1st year from effective date;

(2) 184 hours during 2d year from such date;

(3) 176 hours during 3d year from such date;

(4) 168 hours during 4th year from such date; and

(5) 160 hours thereafter.

The House amendment provided for a complete overtime exemption for policemen and firemen.

The Senate receded with an amendment which provides that firefighters and law enforcement personnel receive overtime compensation for tours of duty in excess of—

(1) 240 hours in a work period of 28 days (60 hours in a work period of 7 days) or in the case of any work period between 7 and 28 days, a proportionate number of hours in such work period) during the year beginning January 1, 1975.

(2) 232 hours in a work period of 28 days (58 hours in a work period of 7 days) or in the case of any work period between 7 and 28 days, a proportionate number of hours in such work period) during the year beginning January 1, 1976; and

(3) 216 hours in a work period of 28 days (54 in a work period of 7 days) or in the case of any work period between 7 and 28 days, a proportionate number of hours in such work period) during the year beginning January 1, 1977, and thereafter, except that if the Secretary finds on the basis of separate studies conducted during the calendar year 1976 of the average duty hours of firefighters and law enforcement personnel that such average duty hours is lower than 216 hours in a work period of 28 days (54 hours in a work period of 7 days) or in the case of any work period between 7 and 28 days, a proportionate number of hours in such work period) in calendar year 1975 then such lower figures shall be effective January 1, 1978, and thereafter.

Public agencies which employ fewer than 5 employees either in firefighting or law enforcement activities are exempt and the duty hours of such employees are not to be calculated in the Secretary's studies of average duty hours.

The conference substitute further provides for averaging duty hours over the work period so long as the work period is no greater than 28 consecutive days. The conference substitute departs from the standard FLSA "hours of work" concept directed primarily at industrial and agricultural occupations and adopts an overtime standard keyed to the length of the tours of duty, thereby reflecting the uniqueness of the firefighting service. The Secretary is directed to adopt regulations implementing these new and unique provisions, including regulations defining what constitutes a tour of duty.

COVERAGE TEST FOR HOUSEHOLD DOMESTIC EMPLOYEES

The Senate bill provided that an employee employed in domestic service in a household would be covered under both minimum wage and overtime unless the employee receives from his employer wages which would not, because of section 209(g) of the Social Security Act, constitute "wages" for purposes of title II of such Act (wages of less than $50 in a calendar quarter).

Under the House amendment such an employee would be covered under minimum wage for any workweek in which such employment is for more than 8 hours in the aggregate. If the employer employs such an employee in domestic service in a household for more than 40 hours in a workweek, the employer would be required to pay the employee overtime compensation.

The conference substitute combines both provisions to establish alternative tests for coverage. The conference substitute retains the exemption for casual babysitters and companions contained in both bills and retains the overtime exemption for "live-in" domestic employees.

The Committee expects the Secretary to immediately undertake a program utilizing all feasible administrative procedures to ap-

prise employers of their responsibilities under the Act and to notify employees of their rights and entitlements under the Act. The Committee further expects the Secretary to seek the assistance of the Social Security Administration and other relevant agencies in this regard.

The Secretary shall also adopt regulations and enforcement procedures to require that employers are reasonably apprised of when their obligation regarding the payment of the minimum wage commences.

EFFECTIVE DATE OF REVISION OF SECTION 13(a)(2) EXEMPTION

The Senate bill reduced the ceiling on annual dollar volume of sales applicable to the minimum wage and overtime exemption of employees of retail-service establishments in section 3(s) enterprises as follows:

(1) Effective Jan. 1, 1975, reduced from $250,000 to $225,000.

(2) Effective Jan. 1, 1976, reduced from $225,000 to $200,000.

Effective Jan. 1, 1977, the exemption for such employees was repealed.

The House amendment provided that such ceiling be reduced as follows:

(1) Effective July 1, 1975, reduced from $250,000 to $225,000.

(2) Effective July 1, 1976, reduced from $225,000 to $200,000.

Effective July 1, 1977, the exemption for such employees was repealed.

The House receded.

STUDENT EMPLOYMENT IN RETAIL AND SERVICE ESTABLISHMENTS

The Senate bill retained the existing law limit on the number of hours students may be employed by a retail or service establishment under certificates authorizing payment of less than the applicable minimum wage. Under the limit the proportion of student hours of employment in any month under certificates to the total hours of employment of all employees in a retail service establishment may not exceed the proportion existing in the establishment for the corresponding month of the year preceding the date of first coverage of its employees under the Act or, if no records or if a new establishment, the proportion existing in similar establishments in the area in the year prior to the 1961 Amendments.

The House amendment eliminated such existing law limits.

The conference substitute revises the existing law limit on the number of hours students may be employed by a retail or service establishment under certificates authorizing payment of less than the applicable minimum wage.

In the case of a retail or service establishment whose employees are covered by the Act before the effective date of the Fair Labor Standards Amendments of 1974, the monthly proportion of certified student hours of employment to total hours of employment in any such establishment may not exceed (A) such proportion in the corresponding month of the preceding twelve-month period, (B) the maximum proportion to which the establishment was ever entitled in corresponding months of preceding years, or (C) one-tenth of the total hours of employment of all employees in the establishment, whicheyer proportion is greater.

In the case of retail or service establishments whose employees are covered for the first time by the Fair Labor Standards Amendments of 1974, the monthly proportion of certified student hours of employment to total hours of employment in any such establishment may not exceed (A) such proportion in the corresponding month of the preceding twelve-month period, (B) the proportion of hours of employment of students (as distinct from student hours of employment under certificates) in the establishment to the total hours of all employees in the establishment in the corresponding month of the twelve-month period immediately prior to the effective date of the Fair Labor Standards Amendments of 1974, or (C) one-tenth of the total hours of employment of all employees in the establishment, whichever proportion is greater.

In the case of a retail or service establishment for which records of student hours are not available (including those newly established after the effective date of the Fair Labor Standards Amendments of 1974). the monthly proportion of certified student hours of employment to total hours of employment in any such establishment shall be determined according to the practice during the immediately preceding twelve-month period in (A) similar establishments of the same employer in the same general metropolitan area in which such establishment is located, (B) similar establishments of the same or nearby communities if such establishment is not in the metropolitan area, or (C) other establishments of the same general character operating in the community or the nearest comparable community. Once such an establishment obtains a record of employment data, one of the preceding categories of limitations (whichever is applicable) shall take effect with respect to such establishment.

In determining student hours of employment under certificates for purposes of applying the proportionate limitation described above, the Secretary is to include all student hours of employment under certificates whether or not subject to the pre-certification procedures.

In the case of private institutions of higher learning no prior certification will be required unless such institutions violate the Secretary's requirements.

STUDY

The Senate bill directed the Secretary of Labor to conduct a continuing study on the means to prevent curtailment of employment opportunities among manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). A report of the results of such study shall be transmitted to the Congress one year after the effective date of the 1974 Amendments and thereafter at two-year intervals after such date. Such report shall include suggestions respecting the Secretary's authority under section 14 of the Act.

The House amendment contained no comparable provision.

The House receded.

EFFECTIVE DATE

The Senate bill provided that the amendments made by the bill would take effect on the first day of the first full month which begins after the date of enactment.

The House amendment provided that the amendments made by the bill would take effect on the first day of the second full month which begins after the date of enactment.

The conference substitute provides an effective date of May 1, 1974.

PUERTO RICO AND THE VIRGIN ISLANDS

The committee is aware that industry committees meet throughout a year to recommend increases in relevant wage orders, and further recognizes that such committees are now convened and that others have recently discharged their responsibilities. Acknowledging the inequity involved with mandating across-the-board adjustments in wage orders which have only recently been increased upon recommendation of appropriate industry committees, the committee intends that the Secretary consider such increases in applying the statutory adjustments; that is, that increases recommended within a reasonable time prior to the effective date of the statutory adjustments be compared to the increases required by the bill so that only the greater of the two shall initially apply. For purposes of administration, the committee intends that 3 months be deemed a reasonable time.

CARL D. PERKINS,
JOHN H. DENT,
DOMINICK V. DANIELS,
PHILLIP BURTON,
JOSEPH M. GAYDOS,
WILLIAM CLAY,
MARIO BIAGGI,
ALBERT H. QUIE,
JOHN N. ERLENBORN,
ORVAL HANSEN,
JACK F. KEMP,
RONALD A. SARASIN,
Managers on the Part of the House.

HARRISON A. WILLIAMS, Jr.,
JENNINGS RANDOLPH,
CLAIBORNE PELL,
GAYLORD NELSON,
THOMAS F. EAGLETON,
HAROLD E. HUGHES,
WILLIAM D. HATHAWAY,
JACOB K. JAVITS,
RICHARD S. SCHWEIKER,
ROBERT TAFT, Jr.,
ROBERT T. STAFFORD,
Managers on the Part of the Senate.

PRESIDENT NIXON'S CURBSTONE DIPLOMACY

(Mr. CHARLES H. WILSON of California asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. CHARLES H. WILSON of California. Mr. Speaker, in his Chicago appearance of March 15, President Nixon "made it perfectly clear" that 1974 was not to be the year of Europe. By implying that we would cut military forces in Europe unless the Common Market countries cooperate with the United States in political and economic areas, Nixon played a trump card that may or may not take the trick.

Since every public utterance of the President of the United States is considered official Government policy, this latest squeeze play is particularly alarming, undermining as it does Nixon's self-proclaimed image as a great statesman. Would he be the darling of the Kremlin at the expense of our longstanding friendship with our European allies?

Suggesting that if the Common Market countries continue to "gang up against the United States," he may cancel plans to go to Europe next month to sign two declarations of principles in connection with the 25th anniversary of the North Atlantic Treaty Organization, Mr. Nixon's remarks provoked widespread bewilderment in Europe on just why a joint declaration of principles should so raise our President's blood pressure. The reaction in France was particularly vitriolic as the newspaper Le Monde wrote that—

Mr. Nixon . . . makes one think he's not in control of himself.

Every time our President addresses the Nation, he calls ample attention to his so-called achievements in the delicate area of foreign policy. But what an ironic accomplishment it is to forge a tenuous détente with the Communists at the expense of those allies upon whom we have

spent billions of dollars to strengthen against the threat of communism. In the Middle East, we have created another curious stalemate. The Arabs are friendly to us only because we have allowed them to triple the cost of fuel oil exported to the United States while it is difficult to tell a present just how we are regarded by Israel.

Because of his impulsive attack against Europe, President Nixon has precipitated a showdown which may well backfire. By forcing Europe's hand, Mr. Nixon is roadblocking cooperation on specific issues.

The United States and Europe share a valued community of interest, both culturally and psychologically, which is now under stress. Admittedly, our military support of Europe depends upon political and economic cooperation yet President Nixon's blunt manner of accentuating this basic fact of international life jeopardizes cordial relations with our allies.

In throwing down the gauntlet, President Nixon has engaged the United States and Europe in a battle of wills. Instead of pushing forward on the diplomatic front, an area in which the President never fails to claim his superiority, his latest maneuver moves us backward. Handing Russia the wheat deal while giving Europe the back of our hand is surely an erratic and dangerous way to conduct American foreign policy.

JANE FONDA SHOULD BE PROSECUTED

(Mr. HUBER asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. HUBER. Mr. Speaker, at the time of the gentleman from Alabama's (Mr. DICKINSON) special order last week to examine the activities of Jane Fonda, I was, regretfully, unable to be present. I salute my distinguished colleague for focusing attention on the activities of this un-American girl.

At this late date, I have the special advantage of the statements and evidence provided by my colleagues. That, together with other evidence and her own recent statements, shows a pattern of disloyal behaviour that should outrage every loyal American.

Jane Fonda contributed to the anguish, pain, and suffering of the Americans who had the patriotic commitment to fight for their country and were unfortunate enough to be POW's. Fonda and Hayden, and their apologists, take cover behind the claim of free speech. In their particular exercise of that very important right, however, they have foresaken all sense of responsible citizenship incumbent upon free people.

But Jane Fonda has done far more.

Examined from the evidentiary focus of a grand jury, the testimony of my colleagues establishes sufficient factual allegations to support indictments against Jane Fonda on the ground of conspiracy and under the Sedition Act (18 U.S.C. 2387).

The record shows that Jane Fonda went to Hanoi broadcast messages to our troops urging them to mutiny and refuse further duty. Mutiny is an illegal act and, more over, urging the commision of an illegal act is an illegal act.

As is well known, the Communists would never permit an American to use their radio without knowing, in advance, that such Americans were going to somehow say things that would aid and abet their cause. Any appearance on radio Hanoi would, therefore, necessarily be the result of prior contact and therein lies the conspiracy.

Section 2387 of title 18 of the United States Code states that—

> Whoever, with intent to interfere with, impair, or influence the loyalty, morale or discipline of the military . . . forces of the United States, advises, counsels, urges, or in any manner causes or attempts to cause insurrection, disloyalty, mutiny or refusal of duty by any member of the military . . . shall be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

I am requesting the Attorney General to further investigate this matter with a view toward bringing Ms. Fonda and the appropriate charges before a grand jury, and I ask my colleagues, particularly those who participated in this special order, to join me in that request.

BADILLO TO ASK FOR PUBLIC/PRIVATE PARTNERSHIP IN OIL INDUSTRY

(Mr. BADILLO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BADILLO. Mr. Speaker, the clearest lesson to emerge from the energy crisis is the necessity for continuing Government involvement in all the activities of the industry that controls the fuel so vital to the country's well-being.

The energy bills we have passed to date are only stopgap measures designed to deal with a short-term crisis. The question we must deliberate now is the role of the Government over the longer term to insure that the public interest is never again subordinated to the private goals of an industry with such a pervasive impact on our lives.

Proposals with varying degrees of Government intervention can be placed in four general categories: First, continued private ownership of the oil industry with increased Government controls and regulations; second, making the oil industry a public utility; third, outright public ownership and operation, either on an industrywide basis or through a Federal corporation; and fourth, creation of a public/private partnership with the Federal Government owning 51 percent of the enterprise.

Establishing an agency to write rules and regulations for the oil industry will not be sufficient to guarantee the availability of future supplies, a fair price structure, or equitable distribution when resources are limited. The second of Government regulatory agencies—staffed as they customarily are with personnel from the industry being regulated—is not studded with examples of the public interest taking precedence over the protection of private business interests.

The public utility concept fails on the same grounds. Utilities are run on a cost-plus basis, with management policies directed toward benefits from the shareholders to the neglect of public service. We have examples all around us of the constant clash between utilities and the interests of the people and the communities they are ostensibly serving.

The third alternative, nationalization, is not politically realistic at this time. Nor would the establishment of a Government corporation as a "yardstick" for the industry achieve what should be a major goal—assurance of future supplies for the many sectors of society dependent on petroleum.

I believe that the national interest would best be served by creation of a public/private partnership in the oil industry, with the American people—through the Federal Government—holding a controlling interest. With the public as majority shareholder and with its representatives sitting on the boards of directors with the majority of the votes, we can reasonably anticipate that there will be in the future not contrived shortages, no excessive profiteering, no secret deals with foreign governments, and no private monopoly in control of the energy resources so crucial to the health of our economy and the course of our daily lives.

With public participation in decision-making, we can hopefully guarantee highest priority for development of new reserves, the establishment of a fair and rational price structure, equitable allocation of available resources on a nationwide basis and a reasonable return to the Treasury from earnings gained by extraction of natural resources, so many of which are found on public lands.

Governments around the world are moving into energy policy. It is clear that our own national interest cannot be best represented by private industry in negotiations with foreign governments. It is also time to reverse the political equation that has enabled the oil industry to write its own tax laws, raise prices without relation to costs, and in general subordinate the welfare of the American people to its single-minded pursuit of escalating profits.

I have, therefore, directed my staff to prepare legislation to authorize the creation of such a public/private partnership. Over the past few months we have learned how vulnerable we are to the activities of one highly centralized industry. A new public role in oil is required so that we may insure the predominance of the national interest over the balance sheets of one sector of the economy.

THE ADMINISTRATOR OF THE VETERANS' ADMINISTRATION SHOULD RESIGN

(Mr. WALDIE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WALDIE. Mr. Speaker, a few weeks ago in California a group of disabled veterans of the Vietnam war, mostly confined to wheelchairs, were

lever movement from neutral to forward shall be clockwise. It also requires an interlock to prevent starting the vehicle in reverse or forward drive positions, transmission braking capability and the permanent marking of the shift lever sequence. Its purpose is to reduce the likelihood of shifting errors, starter engagement with vehicle in gear and provide supplemental braking speeds below 25 miles per hour.

STANDARD NO. 103—WINDSHIELD DEFROSTING AND DEFOGGING SYSTEMS

This standard requires that all buses manufactured for sale in the continental United States be equipped with windshield defrosters. The purpose of the standard is to provide visibility through the windshield during frosting and fogging conditions.

STANDARD NO. 104—WINDSHIELD WIPING AND WASHING SYSTEMS

This standard requires that all buses be equipped with two or more speed power-driven windshield wipers and windshield washer systems. Its purpose is to provide improved visibility through the windshield during inclement weather. The standard includes test procedures and performance requirements for the washer system.

STANDARD NO. 105—HYDRAULIC BRAKE SYSTEMS

This revised standard requires buses utilizing hydraulic brakes to have a split brake system, incorporating service and emergency brake features that are capable of stopping the vehicle under certain specified conditions; such as "hot" and "wet" fade, partial failure, and inoperative power assist. The parking brake system must be capable of holding light vehicles on a 30 percent grade and heavy vehicles on a 20 percent grade. It also requires warning lights to indicate loss of pressure, low fluid level and antilock system failure. The effective date is September 1, 1975.

STANDARD NO. 107—REFLECTING SURFACES

This standard requires that windshield wiper arms, inside windshield moldings, horn rings and the frames and brackets of inside rearview mirrors have matte surfaces which will reduce the likelihood of visual glare in the driver's eyes.

STANDARD NO. 108—LAMPS, REFLECTIVE DEVICES AND ASSOCIATED EQUIPMENT

This standard specifies requirements for lamps, reflective devices, and associated equipment, for signalling and to enable safe operation in darkness and other conditions of reduced visibility. Sidemarker lights and reflectors, hazard warning lights and backup lights are included in the requirements for these vehicles. This standard has been amended several times increasing the safety performance levels of lighting systems. Several revisions were made in the standard, effective January 1, 1972, including the extension of the requirements to cover applicable replacement equipment. Another amendment, effective January 1, 1973, affects turn signals and hazard warning signal flashers.

STANDARD NO. 112—HEADLAMP CONCEALMENT DEVICES

This standard specifies that any fully opened headlamp concealment device shall remain fully opened whether either or both of the following occur: (a) any loss of power to or within the device or (b) any malfunction of wiring or electrical supply for controlling the concealment device occurs. Its purpose is to eliminate the possibility of loss of forward visibility due to malfunction of the headlamp concealment device, a problem with some devices.

STANDARD NO. 113—HOOD LATCH SYSTEMS

This standard, effective January 1, 1969, specifies requirements for a hood latch system for each hood. A front opening hood, which in an open position, partially or competely obstructs a driver's forward view through the windshield, must be provided with a second latch position on the hood latch system or with a second hood latch system.

STANDARD NO. 116—HYDRAULIC BRAKE FLUIDS

This standard specifies minimum physical characteristics for two grades of brake fluids, DOT 3 and DOT 4, for use in hydraulic brake systems of all motor vehicles. In addition, the standard establishes labeling requirements for all brake fluid containers.

STANDARD NO. 121—AIR BRAKE SYSTEMS

Effective September 1, 1974, each air braked bus is required to have a service brake and a parking brake system that will result in significantly improved levels of performance over existing vehicles. Stopping capabilities are established at both loaded and unloaded conditions, and on high and low coefficient of friction surfaces. In addition, the standard provides for an emergency braking system that activates in the event of loss of air pressure. It also establishes requirements for emergency braking system in the event of a failure in the primary service braking system. It also establishes requirements for various items of equipment.

STANDARD NO. 124—ACCELERATOR CONTROL SYSTEMS

This standard establishes requirements for the return of a vehicle's throttle to the idle position when the driver removes the actuating force from the accelerator control, or in the event of a breakage or disconnection in the accelerator control system.

STANDARD NO. 205—GLAZING MATERIALS

This standard specifies requirements for all glazing materials used in windshields, windows, and interior partitions of motor vehicles. Its purpose is to reduce the likelihood of lacerations to the face, scalp, and neck, and to minimize the possibility of occupants penetrating the windshield in collisions. It requires, among other things, that windshields be of a type that tends to cushion those that impact them, rather than allowing head penetration and even decapitation—a problem with older windshields.

STANDARD NO. 207—SEATING SYSTEMS

This standard establishes requirements for seats, their attachment assemblies, and their installation to minimize the possibly of failure as a result of forces acting on the seat on vehicle impact. This standard was amended, effective January 1, 1972, to extend applicability to the driver's seat of buses.

STANDARD NO. 208—OCCUPANT CRASH PROTECTION

This standard, previously titled "Seat Belt Installations" specifies requirements for lap and shoulder belt installations in passenger cars, and was effective beginning January 1, 1968. The standard was amended September 23, 1970 to extend applicability to multipurpose passenger vehicles, trucks, and the driver's seat in buses. The standard was further amended and re-titled "Occupant Crash Protection"—March 3, 1971. This amendment specifies requirements for both active and passive occupant crash protection systems. Effective January 1, 1972, buses (driver's seat only) are required to have a complete passive protection system or a belt system conforming to Standard No. 209, i.e. seat belt.

STANDARD NO. 209—SEAT BELT ASSEMBLIES

In order to mitigate the results of an accident to a person in a motor vehicle, the standard specifies requirements for seat belt assemblies. The requirements apply to straps, webbing, or similar devices as well as all necessary buckles and other fasteners, and all hardware designed for installing the assembly in a motor vehicle. Included is a requirement for anchorages for lap and upper torso restraint belts in all forward facing outboard seats (four in standard sedans). This standard was amended to upgrade webbing abrasion, buckle crash and emergency locking retractor requirements.

STANDARD NO. 210—SEAT BELT ASSEMBLY ANCHORAGES

This standard specifies the requirements for seat belt assembly anchorages to insure effective occupant restraint and to reduce the likelihood of failure in collisions. Included is a requirement for anchorages for lap and upper torso restraint belts in all forward facing outboard seats (four in standard sedans). This standard was amended extending the requirements to driver's seats in buses and upgrading the test requirements effective January 1, 1972.

STANDARD NO. 217—BUS WINDOW RETENTION AND RELEASE

This standard establishes minimum requirements for bus window retention and release to reduce the likelihood of passenger ejection in accidents and enhance passenger exit in emergencies. The effective date is September 1, 1973.

STANDARD NO. 302—FLAMMABILITY OF VEHICLE INTERIOR MATERIALS

Specifies burn resistance requirements for materials used in the compartments of motor vehicles. It becomes effective September 1, 1972.

CORRECTION OF A VOTE

Mr. WILLIAMS. Mr. President, on reviewing the RECORD, this morning, on legislative rollcall No. 89, Mr. PASTORE's motion to lay on the table Mr. MCGOVERN's amendment to Mr. ALLEN's amendment, I notice that I am listed as not voting. I was in a hearing at that time. I did come to the Chamber. I did vote.

I ask unanimous consent that the permanent RECORD show that I voted in the affirmative.

The PRESIDING OFFICER. Without objection, it is so ordered.

FAIR LABOR STANDARDS AMENDMENTS OF 1974—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, morning business having expired, the Senate will now proceed to the consideration of the conference report on S. 2747, which will be stated by title.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2747) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that act, to expand the coverage of the act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of March 26, 1974, at pp. H2180–2186.)

Mr. ROBERT C. BYRD. Mr. President,

I suggest the absence of a quorum. I ask unanimous consent that the time be charged equally against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, I bring back to the Senate the conference report on minimum wage legislation and urge that the Senate agree to the report. I will say before briefly explaining the conference report that the Senate conferees, despite their strenuous efforts, were confronted by a strong degree of unanimity on the part of the House conferees, supported in a great measure by a letter from the President reflecting a preference for the House provisions.

Mr. President, briefly the major issues separating the conferees were the wage increases, coverage of domestic service employees, coverage of firefighters and police, and special provisions for the employment of students at a subminimum rate. I will say at the outset that a general youth subminimum was not an issue in this year's conference in that authorization for such a youth subminimum was not contained in either bill. However, the House conferees did agree to the amendment by the Senator from Ohio mandating a study of unemployment for disadvantaged people including youth.

MINIMUM WAGE RATES

The Senate conferees yielded to the House on the wage package. Although in our judgment the Senate package would have brought meaningful increases to many workers at an earlier period of time, we were impressed that the House wage package reflected the near unanimous judgment of the House of Representatives.

In addition, the President in his letter to me of February 27, 1974, reflected his own judgment that the wage increases of the House package were designed "in a way which should reduce the inflationary and disemployment impact that last year's bill would have had." I remind Senators that the President vetoed last year's bill. Although I do not agree with the President, I am not looking for an issue; rather the Senate conferees are looking to achieve the goal of the Senate, namely, to provide more meaningful wages to America's low wage workers.

DOMESTIC SERVICE EMPLOYEES

The Senate and House conferees reached agreement that it would be best if the conference report contained both the Senate and House tests for minimum wage coverage for domestic service employees. Under the conference report, therefore, a domestic service employee will be covered for minimum wage purposes if either test is met. In addition, the conferees retained the provisions in both bills exempting casual babysitters and companions from minimum wage and overtime coverage, and live-in domestics from overtime coverage.

FIREFIGHTERS AND POLICE

Under the Senate bill a limited overtime exemption was authorized for policemen and firemen, under employer-employee agreements providing a 28-day work period, and if during such period such employees receive overtime compensation for employment in excess of—

First, 192 hours during first year from effective date;

Second, 184 hours during second year from such date;

Third, 176 hours during third year from such date;

Fourth, 168 hours during fourth year from such date; and

Fifth, 160 hours thereafter.

The House amendment provided for a complete overtime exemption for policemen and firemen.

The Senate receded with an amendment which provides that firefighters and law enforcement personnel receive overtime compensation for tours of duty in excess of—

First, 240 hours in a work period of 28 days—60 hours in a work period of 7 days or in the case of any work period between 7 and 28 days, a proportionate number of hours in such work period—during the year beginning January 1, 1975.

Second, 232 hours in a work period of 28 days—58 hours in a work period of 7 days or in the case of any work period between 7 and 28 days, a proportionate number of hours in such work period—during the year beginning January 1, 1976; and

Third, 216 hours in a work period of 28 days—54 in a work period of 7 days or in the case of any work period between 7 and 28 days, a proportionate number of hours in such work period—during the year beginning January 1, 1977, and thereafter, except that if the Secretary finds on the basis of separate studies conducted during the calendar year 1976 of the average duty hours of firefighters and law enforcement personnel that such average duty hours are lower than 216 hours in a work period of 28 days—54 hours in a work period of 7 days or in the case of any work period between 7 and 28 days, a proportionate number of hours in such work period—in calendar year 1975 then such lower figures shall be effective January 1, 1978, and thereafter.

Public agencies which employ fewer than five employees either in firefighting or law enforcement activities are exempt and the duty hours of such employees are not to be calculated in the Secretary's studies of average duty hours.

The conference substitute further provides for averaging duty hours over the work period so long as the work period is no greater than 28 consecutive days. The conference substitute departs from the standard FLSA hours of work concept directed primarily at industrial and agricultural occupations and adopts an overtime standard keyed to the length of the tours of duty, thereby reflecting the uniqueness of the firefighting service. The Secretary is directed to adopt regulations implementing these new and unique provisions, including regulations defining what constitutes a tour of duty.

In establishing this "tour of duty" concept as a new element of the Fair Labor Standards Act, the conferees were recognizing that the work schedule of firefighters is dictated by the needs of the community.

Firefighters may be needed at any time of any day to fight fires. But to do so effectively, they need to be constantly prepared. Our safety in our homes depends as much on their ability to maintain their equipment and their own physical condition as it does on their willingness to risk their lives to save our lives and our property. They are on duty, in some jurisdictions, for 24 hours in a row. In others they work 10 and 14-hour shifts or 9 and 15-hour shifts. Whatever their varying schedules, they are subject to our call. They are not free to follow their own pursuits. They must be there ready to respond immediately to the alarm, whether it be false or not.

To accomodate this need by society and the "tour of duty" concept so generally applicable in firefighting, the Senate conferees were willing to abandon the "hours of work" concept of the Senate bill and the complexities that this concept entailed, while adhering to the Senate's expressed will that firefighters, like most other workers, be protected from abusive duty schedules by covering them under the overtime provisions of the law.

In this regard, it should be noted that the bill establishes a Federal standard that is applicable to all firefighters, whether Federal, State or local, unless they are employed by public agencies employing fewer than five employees in firefighting activities.

While this bill, in many instances, will require payment of the time and a half overtime rate for hours in excess of the statutory limits, it does permit the flexibiliy of scheduling by authorizing the averaging of hours over a period of not to exceed 28 days. This provision also permits the use of so-called "comp time" within the cycle.

Furtherraore, the committee expects the Secretary of Labor to adopt regulations which permit the continuation of the practice of "trading time" both within the tour of duty cycle, the 28-day "averaging" work period and from one cycle or period to another within the calendar or fiscal year without the employer being subject to the overtime rate by virtue of the voluntary trading of time by employees.

STUDENT EMPLOYMENT

The Senate bill retained the existing law limit on the number of hours students may be employed by a retail or service establishment under certificates authorizing payment of less than the applicable minimum wage. Under the limit the proportion of student hours of employment in any month under certificates to the total hours of employment of all employees in a retail service establishment may not exceed the proportion existing in the establishment for the corresponding month of the year preceding the date of first coverage of its employees under the act or, if no records or if a new establishment, the proportion existing in similar establishments in the area in the year prior to the 1961 amendments.

The House amendment eliminated such existing law limits.

The conference substitute revises the existing law limit on the number of hours students may be employed by a retail or service establishment under certificates authorizing payment of less than the applicable minimum wage.

In the case of a retail or service establishment whose employees are covered by the act before the effective date of the Fair Labor Standards Amendments of 1974, the monthly proportion of certified student hours of employment to total hours of employment in any such establishment may not exceed, first, such proportion in the corresponding month of the preceding 12-month period; second, the maximum proportion to which the establishment was ever entitled in corresponding months of preceding years; or third, one-tenth of the total hours of employment of all employees in the establishment, whichever proportion is greater.

In the case of retail or service establishments whose employees are covered for the first time by the Fair Labor Standards Amendments of 1974, the monthly proportion of certified student hours of employment to total hours of employment in any such establishment may not exceed, first, such proportion in the corresponding month of the preceding 12-month period; second, the proportion of hours of employment of students—as distinct from student hours of employment under certificates—in the establishment to the total hours of all employees in the establishment in the corresponding month of the 12-month period immediately prior to the effective date of the Fair Labor Standards Amendments of 1974; or third, one-tenth of the total hours of employment of all employees in the establishment, whichever proportion is greater.

In the case of a retail service establishment for which records of student hours are not available—including those newly established after the effective date of the Fair Labor Standards Amendments of 1974—the monthly proportion of certified student hours of employment to total hours of employment in any such establishment shall be determined according to the practice during the immediately preceding 12-month period in, first, similar establishments of the same employer in the same general metropolitan area in which such establishment is located; second, similar establishments of the same or nearby communities if such establishment is not in the metropolitan area; or third, other establishments of the same general character operating in the community or the nearest comparable community. Once such an estabilshment obtains a record of employment data, one of the preceding categories of limitations—whichever is applicable—shall take effect with respect to such establishment.

In determining the student hours of employment under certificates for purposes of applying the proportionate limitation described above, the Secretary is to include all student hours of employment under certificates whether or not subject to the precertification procedures.

In the case of private institutions of higher learning no prior certification will be required unless such institutions violate the Secretary's requirements.

Questions have been raised by many Senators regarding the treatment of young workers under this legislation. These amendments do not treat young workers as a separable class of workers. The law, however, as it exists and as it would be amended by this legislation, recognizes that some young workers, as well as many other workers regardless of age, encounter difficulties in the job market because of their lack of training and lack of skill. This lack of training and lack of skill may have the effect of curtailing employment opportunities for them. In addition, there are workers whose employment opportunities may be curtailed by their in ability to work full-time because of their status as full-time students or because their earning capacity is impaired by age or mental or physical deficiency or injury.

With this in mind the Congress, beginning with the enactment of the first Fair Labor Standards Act in 1938, has legislated special authority in the Secretary of Labor, where necessary to prevent curtailment of opportunities for employment for these potential workers without creating a substantial probability of reducing the full-time employment opportunities of other persons, to provide, by regulation or order, for the employment of learners, of apprentices, of messengers employed primarily in delivering letters and messages, of full-time students in retail or service establishments and in agriculture or by their educational institutions, and of workers whose earning or productive capacity is impaired by age or physical or mental defiency or injury, at rates below the minimum.

Section 14 of the act, as it would be amended by these Fair Labor Standards Amendments of 1974, provides special limitations on the authority of the Secretary in each of these categories to guard against potential abuse. And, it must be noted that the potential for abuse is not purely hypothetical. Public attention has recently been focused on two such examples which are noteworthy. The first, reflected in the committee report on S. 2747, relates to institutions which provide care for handicapped persons.

It is distressing to know that many of these institutions require their patients to perform such services for the institutions as custodial work. Under the guise that such work is "therapeutic," these institutions require patients to perform productive labor for which the patients would certainly have to be renumerated outside the institution and for which the institution would otherwise be required to employ nonhandicapped individuals at fair labor standards. A second example has arisen under the Labor Department's WECEP program for training 14- and 15-year-old students.

Under that program, a small number of establishments in Florida were found on investigation, to have committed approximately 500 violations of certificates issued under the FLSA. These violations included minimum wage violations but most requiring 14- and 15-year-olds to work hours in excess of those permitted by certificate. This not only interfered with their education, it also has serious potential for undercutting adult employment opportunities.

Without exploring all of the potential for abuse under each of the different subsections of section 14, it is important to note the following with regard to any programs which may be undertaken by a Secretary of Labor within the limitations of section 14(a).

Section 14(a) of the act permits the Secretary to issue special certificates authorizing the employment of learners and apprentices "at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe." In issuing such certificates, however, the Secretary must consider whether there is an adequate supply of qualified experienced workers available for employment and whether reasonable efforts have been made to recruit them.

Experienced workers presently employed in a plant in occupations in which learners are requested must be afforded an opportunity to the fullest extent possible to obtain full-time employment. The Secretary must guard against any authorization to employ learners at subminimum wage rates where such rates will tend to create unfair competitive labor cost advantages or have the effect of impairing or depressing wage or work standards established for experienced workers for work of a like or comparable character in the industry.

Under no circumstances can employment of learners be authorized where there are serious outstanding violations of the Fair Labor Standards Act or certificates issued thereunder, and, as a consequence, the Secretary has reasonable grounds to believe that the employer may not comply with the terms and conditions of any new learner certificate. Similarly, certificates cannot be issued where a strike, lockout, or other similar abnormal labor condition exists.

In exercising his judgment on whether to issue a certificate, the Secretary must take into consideration whether the occupation for which authorization is granted is one which is customarily learned in a practical way through training and work experience on the job, of sufficient duration, whether it requires related instruction to supplement the work experience, and whether it involves the development of skill sufficiently broad to be applicable in other occupations. This, together with the requirement that learners be afforded every reasonable opportunity for continued employment upon completion of the learning period, will insure to the greatest extent feasible that the training will lead to gainful employment.

Of course, learners must in fact be available for employment and the Secretary must determine that the granting

of a certificate is necessary in order to prevent curtailment of opportunities for employment.

Since the provisions of section 14(a) are directed at situations where a lack of training and skill curtails employment opportunities, the occupation or occupations in which learners are to receive training must in fact involve a sufficient degree of skill to necessitate an appreciable training period. So, for example, the provisions of section 14(a) would not be applicable where the skills required can be learned in a few hours of filmed lectures and demonstrations. In this regard, this provision is not intended to authorize the employment of learners at subminimum wage rates as homeworkers, or in maintenance occupations such as watchmen or porters, or in operations of a temporary or sporadic nature. Similarly, certification, under this section, is not available with respect to selling, retailing or similar occupations in the distributive field, managerial, clerical, professional and semiprofessional occupations, although the provisions of section 14(b) may be applicable for such employment in retail or service establishments.

Of course, no authorization can be granted which is inconsistent with higher standards applicable to learners which may be established under any other Federal law, any State law, any learner certificate in effect under the Fair Labor Standards Act, nor under any collective bargaining agreement. Furthermore, if the Secretary issues a certificate, a notice must be published in the Federal Register giving interested persons a reasonable time, such as 15 days, to file a written request for reconsideration or review.

Mr. President, these compromises reflect a sincere effort by the conferees to meet the President more than half way on the issues he raised in his letter to me. I should also note that the conferees agreed, as the President had requested, that enforcement responsibilities for the application of minimum wage and overtime laws to Federal employees, is generally delegated by the bill to the Civil Service Commission

Mr. President, I ask unanimous consent to include in the RECORD at this point in my remarks a section-by-section analysis of the conference report.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title; References to Act.—The name of this bill is the "Fair Labor Standards Amendments of 1974."

Section 2. Increase in Minimum Wage Rate for Employees Covered Before 1966.—This section amends section 6(a)(1) of the Act to provide an increase in the minimum wage rate for employees covered by the Act prior to the effective date of the 1966 amendments and for Federal employees covered by the 1966 amendments (wage board employees and employees of nonappropriated fund instrumentalities of the Armed Forces). The minimum wage rate for such employees is raised from not less than $1.60 an hour to (1) not less than $2 an hour during the period ending December 31, 1974, (2) not less than $2.10 an hour during the year beginning January 1, 1975, and (3) not less than $2.30 an hour beginning January 1, 1976.

Section 3. Increase in Minimum Wage Rate for Nonagricultural Employees Covered in 1966 and 1973.—This section amends section 6(b) of the Act to provide an increase in the minimum wage rate for nonagricultural employees (other than Federal employees) covered by the 1966 amendments to the Act and for employees covered by the 1974 amendments. The minimum wage rate for such employees is raised from not less than $1.60 an hour to (1) not less than $1.90 an hour during the period ending December 31, 1974, (2) not less than $2 an hour during the year beginning January 1, 1975, (3) not less than $2.20 an hour during the year beginning January 1, 1976, and (4) not less than $2.30 an hour beginning January 1, 197".

Section 4. Increase in Minimum Wage Rate for Agricultural Employees.—This section amends section 6(a)(5) of the Act to provide an increase in the minimum wage rate for agricultural employees covered by the Act. The minimum wage rate for such employees is raised from not less than $1.30 an hour to (1) not less than $1.60 an hour during the period ending December 31, 1974, (2) not less than $1.80 an hour during the year beginning January 1, 1975, (3) not less than $2 an hour during the year beginning January 1, 1976, (4) not less than $2.20 an hour beginning January 1, 1977, and (5) not less than $2.30 an hour during the year beginning January 1, 1978.

Section 5. Increase in Minimum Wage Rate for Employees in Puerto Rico and the Virgin Islands.—

Subsection 5(a) amends section 5 by adding a new subsection (e) to establish, for employees employed in Puerto Rico or the Virgin Islands (a) by the United States government or the government of the Virgin Islands, or (b) by a hotel, motel, or restaurant, or (c) by retail or service establishments employing such employees primarily in connection with the preparation or offering of food or beverages, a minimum wage rate determined in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this Act.

Subsection 5(b) amends subsection (c) of section 6 to require that the rate for employees in Puerto Rico and the Virgin Islands covered by a wage order rate in effect on the day before the effective date of the 1974 amendments which is under $1.40 an hour, be increased by $0.12 an hour; and if such rate is $1.40 or more an hour, such rate be increased by $0.15 an hour. Effective one year later and each subsequent year thereafter the wage order rate for other than commonwealth and municipal employees shall be increased by $0.12 an hour if under $1.40 an hour, and by $0.15 an hour if $1.40 or more an hour, until parity with the mainland is achieved. For agricultural employees covered by a wage order whose wage is increased by a subsidy (or income supplement) the increases prescribed by the 1974 Amendments shall be applied to the wage rate plus the amount of the subsidy (or income supplement). For newly covered employees under the 1974 amendments, a special industry committee shall recommend the highest minimum wage rates which shall not be less than 60 percent of the otherwise applicable rate under section 6(b) or $1.00 an hour whichever is greater. Effective dates of rates recommended by this special industry committee shall not be effective before sixty days after the effective date of the 1974 Amendments and shall be increased in the second and each subsequent year as provided in the 1974 Amendments. Wage rates of any employee in Puerto Rico or in the Virgin Islands shall not be less than 60 percent of the otherwise applicable rate or $1.00, whichever is higher, on the effective date of the wage increases. Wage order rates prescribed in the 1974 Amendments may be increased by a wage order issued pursuant to a special industry committee recommendation but not decreased.

Section 5(c)(1) amends section 8(b) by requiring that special industry committees to recommend the otherwise applicable rate under section (a) or 6(b) except where substantial documentary evidence, including pertinent financial data or other appropriate information establishes that the industry or portion thereof is unable to pay such wage rate. Minimum wage rates in wage orders may, upon review, be specified by a court of appeals.

Section 6. Federal and State Employees.—Section 6 amends section 3(d) and 3(e) to include under the definitions of "employer" and "employee" the United States and any State or political subdivision of a State or intergovernmental agency. This will extend minimum wage and overtime coverage of the law to civilian employees in agencies and activities of the United States (except the armed forces). Elected officials, personal staff, appointees on the policy making level, or immediate advisors in State and local governments are exempt. Coverage of State and local hospitals, nursing homes, schools, and local transit companies is provided under present law. A special overtime compensation provision is included in the 1974 Amendments for Federal, State and local government employees, in fire protection or law enforcement activities including security personnel in correctional institutions. The United States Civil Service Commission is to administer the Act for Federal employees (other than Postal Service, Postal Rate Commission, Library of Congress employees and the TVA.)

Section 7. Domestic Workers.—The Senate bill provided that an employee employed in domestic service in a household would be covered under both minimum wage and overtime unless the employee receives from his employer wages which would not, because of section 209(g) of the Social Security Act, constitute "wages" for purposes of title II of such Act (wages of less than $50 in a calendar quarter).

Under the House amendment such an employee would be covered under minimum wage for any workweek in which such employment is for more than 8 hours in the aggregate. If the employer employs such an employee in domestic service in a household for more than 40 hours in a workweek, the employer would be required to pay the employee overtime compensation.

The conference substitute combines both provisions to establish alternative tests for coverage. The conference substitute retains the exemption for casual babysitters and companions contained in both bills and retains the overtime exemption for "live-in" domestic employees.

The Committee expects the Secretary to immediately undertake a program utilizing all feasible administrative procedures to apprise employers of their responsibilities under the Act and to notify employees of their rights and entitlements under the Act. The Committee further expects the Secretary to seek the assistance of the Social Security Administration and other relevant agencies in this regard.

The Secretary shall also adopt regulations and enforcement procedures to require that employers are reasonably apprised of when their obligation regarding the payment of the minimum wage commences.

It is intended by these comments to put the burden on the administrative arm of the government to use its maximum efforts to communicate with both employers of domestic service employees and such employees of

their rights and duties, of the effective date of the wage increases, and of the overtime provisions and, of any regulations which may become applicable to them. It is not intended to impose any burdens of proof or establish any defenses which do not already exist under the Fair Labor Standards Act.

Section 8. Retail and Service Establishments.—

Section 8 amends section 13(a)(2), the special dollar volume test for retail and service establishments, by phasing out the dollar volume establishment test from the present $250,000 to $225,000 on July 1, 1974, to $200,000 on July 1, 1975; and to repeal the test on July 1, 1976. This amendment would gradually expand the coverage of retail and service activities to include employees of all small establishments of chain store operations in which the total chain operation has gross annual sales of more than $250,000. This provision applies also to employees of establishments which are part of covered conglomerate operations.

Section 9. Tobacco Employees.—

Section 9 amends section 7 and section 13 relating to tobacco employees. A limited overtime exemption (14 weeks, 10 hours per day, and 48 hours per week) is provided for certain employees engaged in activities related to the sale of tobacco. These employees are currently covered by the section 7(c) exemption pursuant to determination by the Secretary of Labor. Section 13 is amended to cover employees engaged in the processing of shade grown tobacco prior to the stemming process for use as cigar wrapper tobacco for minimum wages but not for overtime.

Section 10. Telegraph Agency Employees.—

This section repeals the minimum wage exemption and phases out the overtime exemption for persons engaged in handling telegraph messages for the public under an agency or contract arrangement with a telegraph company, if they are so engaged in retail or service establishments exempt under section 13(a)(2) and if the revenues for such messages are less than $500 a month, as follows: 48 hours in the first year beginning with the effective date of the 1974 Amendments, 44 hours in the second year; and repealed thereafter.

Section 11. Seafood Canning and Processing Employees.—

This section amends section 13(b)(4) relating to fish and seafood processing employees, by phasing out the overtime exemption for such workers, as follows. 48 hours in the first year after the effective date of the 1974 Amendments; 44 hours in the second year; and repealed thereafter.

Section 12. Nursing Home Employees.—

This section amends section 13(b)(8) as it relates to nursing home employees by replacing the limited overtime exemption for employees of nursing homes (overtime compensation required for hours of employment in excess of 48 hours in a week) by the overtime exemption applicable to hospitals. (By agreement, the employer and employee may substitute a 14-consecutive-day work period for the seven day workweek and requires overtime compensation for employment over 8 hours in any workday and for 80 hours in such 14 day work period.)

Section 13. Hotel, Motel, and Restaurant Employees and Tipped Employees.—

This section amends section 13(b)(8) as it relates to hotel, motel, and restaurant employees by limiting the overtime exemption to hours in excess of 48 hours a week during the first year and to hours in excess of 46 hours a week thereafter. This section also amends section 13(b)(8) to phase out the overtime exemption for maids and custodial employees of hotels and motels as follows: 48 hours in the first year; 46 hours in the second year; 44 hours in the third year; repealed thereafter. The tip credit provision of section 3(m) of the FLSA is also amended to require the employer to inform each of such employer's tipped employees of this provision before the credit (up to 50% of the applicable minimum wage but not to exceed the value of tips actually received by the employee) is applied. In addition, this section further requires that all tips received by a tipped employee must be retained by such tipped employee.

Furthermore, regarding the tip credit provision the Department of Labor has regulations applicable to employers of tipped employees which, if complied with, should enable any complying employer to meet the burden of proof regarding the amount of tip credit. Those regulations provide in part as follows:

Section 516.28. Tipped employees

"(a) Supplementary to the provisions of any section of the regulations in this part pertaining to the records to be kept with respect to tipped employees, every employer shall also maintain and preserve payroll or other records containing the following additional information and data with respect to each tipped employee whose wages are determined under section 3(m) of the Act:

"(1) A symbol or letter placed on the pay records identifying each employee whose wage is determined in part by tips.

"(2) Weekly or monthly amount reported by the employee, to the employer, of tips received (this may consist of reports made by the employees to the employer on IRS Form 4070).

"(3) Amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of 50 percent of the applicable statutory minimum wage). The amount per hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week.

"(4) Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or weekly straight-time payments made by the employer for such hours.

"(5) Hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours."

In addition Section 531.52 of the Department of Labor regulations regarding tips provides: "Only tips actually received by an employee as money belonging to him which he may use as he chooses free of any control by the employer, may be counted in determinating whether he is a 'tipped employee' within the meaning of the Act and in applying the provisions of section 3(m) which govern wage credits for tips."

Section 14. Salesmen, Partsmen, and Mechanics.—

This section amends section 13(b)(10) relating to salesmen, partsmen, and mechanics by repealing the overtime exemption for partsmen and mechanics in nonmanufacturing establishments primarily engaged in selling trailers; by repealing the overtime exemption for partsmen and mechanics in nonmanufacturing establishments engaged in selling aircraft; and by providing an overtime exemption for salesmen engaged in the sale of boats.

Section 15. Food Service Establishments.—

This section amends section 13(b)(18) by phasing out the overtime exemption for food service establishments employees as follows: 48 hours during the first year; 44 hours during the second year, repealed thereafter.

Section 16. Bowling Establishment Employees.—

This section amends section 13(b)(19) by phasing out the overtime exemption for employees of bowling establishments in two steps; reducing the exemption from 48 to 44 hours effective one year after the effective date of the 1974 amendments and repealing the exemption two years after the effective date of the 1974 Amendments.

Section 17. Substitute Parents for Institutionalized Children.—

Section 17. Substittue Parents for Insti-

This section amends section 13(b) by providing an overtime exemption for couples who serve as house-parents for orphaned children or cihldren with one parent deceased placed in nonprofit educational institutions if the couple resides on the premises, receives their board and lodging without cost and are together paid on a cash basis not less than $10,000 a year.

This in no way suggests a judgment that a $10,000 combined salary will actually comply with the minimum wage requirements. That will depend on how many hours of work these house-parents are engaged in.

Section 18. Employees of Conglomerates.—

This section amends section 13(a)(2) by providing that the minimum wage exemptions of section 13(a)(2) for certain retail and service establishments, and of 13(a)(6) relating to agricultural employees, would not be applicable to establishments which are part of conglomerates having a combined annual gross volume of sales exceeding $10,000,000.

Section 19. Seasonal Industry Employees.—

This section amends sections 7(c) and 7(d) by phasing out the limited overtime exemption for employees of industries found to be of a seasonable nature or characterized by marked annual recurring seasonal peaks of operation (other than for cotton or sugar processing), as follows: on the effective date, the seasonal periods for exemptions are reduced from 10 weeks to 7 weeks, and from 14 weeks to 10 weeks; on the same date, the workweek exemptions are reduced from 50 hours to 48 hours; effective January 1, 1975, the seasonal periods for exemptions are reduced from 7 weeks to 5 weeks, and from 10 weeks to 7 weeks; effective January 1, 1976, the seasonal periods for exemption are reduced from 5 weeks to 3 weeks, and from 7 weeks to 5 weeks; effective December 31, 1976, the overtime exemptions (sections 7(c) and 7(d)) are repealed.

Section 20. Cotton Ginning and Sugar Processing Employees.—

This section amends section 13(b) by phasing down the overtime exemption for cotton ginning and sugar processing employees, as follows: Effective on the effective date, 72 hours each week for 6 weeks of the year; 64 hours each week for 4 weeks of the year; 54 hours each week for 2 weeks of the year; 48 hours each week for the balance of the year. Effective January 1, 1975, 66 hours each week for 6 weeks of the year; 60 hours each week for 4 weeks of the year; 50 hours each week for 2 weeks of the year; 46 hours each week for 2 weeks of the year; 44 hours each week for the balance of the year. Effective January 1, 1976, 60 hours each week for 6 weeks of the year; 56 hours each week for 4 weeks of the year; 48 hours each week for 2 weeks of the year; 44 hours each week for 2 weeks of the year; 40 hours each week for the balance of the year.

Section 21. Local Transit Employees.—

This section amends sections 7 and 13(b)(7) by phasing out the overtime exemption for all local transit operating employees, as follows: 48 hours on the effective date of the 1974 Amendments; 44 hours one year later, and repealed effective two years after the effective date of the 1974 Amendments.

Section 22. Cotton and Sugar Services Employees.—

This section amends section 13 by adding a subsection (h) which provides a limited overtime exemption for a period not more than 14 workweeks in the aggregate in any calendar year for cotton or sugar service employees received overtime compensation for work in excess of 10 hours in any workweek.

Employers receiving an exemption under this subsection for one type of employee shall not be eligible for any other exemption of this section or section 7 with regard to the same employee.

Section 23. Other Exemptions.—

Section 23 amends section 13 as it relates to motion picture theater employees, employees in forestry and lumbering, and pipeline employees, as follows:

1. Repeals section 13(a)(9) and amends section 13(b) thereby repealing the minimum wage exemption, but retaining the overtime exemption for employees in motion picture theaters.

2. Repeals section 13(a)(13) and amends section 13(b) thereby repealing the minimum wage exemption but retaining the overtime exemption for forestry and lumbering operations with 8 or fewer empolyees.

3. Amends section 13(b)(2) to repeal the overtime exemption for employees of oil pipeline transportation companies.

Section 24. Employment of Students.—

The Senate bill retained the existing law limit on the number of hours students may be employed by a retail or service establishment under certificates authorizing payment of less than the applicable minimum wage. Under the limit the proportion of student hours of employment in any month under certificates to the total hours of employment of all employees in a retail service establishment may not exceed the proportion existing in the establishment for the corresponding month of the year preceding the date of first coverage of its employees under the Act or, if no records or if a new establishment, the proportion existing in similar establishments in the area in the year prior to the 1961 Amendments.

The House amendment eliminated such existing law limits.

The conference substitute revises the existing law limit on the number of hours students may be employed by a retail or service establishment under certificates authorizing payment of less than the applicable minimum wage.

In the case of a retail or service establishment whose employees are covered by the Act before the effective date of the Fair Labor Standards Amendments of 1974, the monthly proportion of certified student hours of employment to total hours of employment in any such establishment may not exceed (A) such proportion in the corresponding month of the preceding twelve-month period, (B) the maximum proportion to which the establishment was ever entitled in corresponding months of preceding years, or (C) one-tenth of the total hours of employment of all employees in the establishment, whichever proportion is greater.

In the case of retail or service establishments whose employees are covered for the first time by the Fair Labor Standards Amendments of 1974, the monthly proportion of certified student hours of employment to total hours of employment in any such establishment may not exceed (A) such proportion in the corresponding month of the preceding twelve-month period, (B) the proportion of hours of employment of students (as distinct from student hours of employment under certificates) in the establishment to the total hours of all employees in the establishment in the corresponding month of the twelve-month period immediately prior to the effective date of the Fair Labor Standards Amendments of 1974, or (C) one-tenth of the total hours of employment of all employees in the establishment, whichever proportion is greater.

In the case of a retail or service establishment for which records of student hours are not available (including those newly established after the effective date of the Fair Labor Standards Amendments of 1974), the monthly proportion of certified student hours of employment to total hours of employment in any such establishment shall be determined according to the practice during the immediately preceding twelve-month period in (A) similar establishments of the same employer in the same general metropolitan area in which such establishment is located, (B) similar establishments of the same or nearby communities if such establishment is not in the metropolitan area, or (C) other establishments of the same general character operating in the community or the nearest comparable community. Once such an establishment obtains a record of employment data, one of the preceding categories of limitations (whichever is applicable) shall take effect with respect to such establishment.

In determining student hours of employment under certificates for purposes of applying the proportionate limitation described above, the Secretary is to include all student hours of employment under certificates whether or not subject to the pre-certification procedures.

In the case of private institutions of higher learning no prior certification will be required unless such institutions violate the Secretary's requirements.

Section 25. Child Labor.—

This section amends section 12 (relating to child labor) by adding a new subsection (d) requiring employers to obtain proof of age from any employee. This section also amends section 13(c)(1) relating to child labor in agriculture by permitting the employment of a child under age 12 in agriculture only if such child is employed outside of school hours for the school district where such employee is living by his or her parent or a person standing in place of his or her parent, on a farm owned or operated by his or her parent or such person, or is employed on a farm not covered by the Act under the 500 man-day test, with the consent of his or her parent or such person. A child 12 or 13 years of age is permitted to be employed on a farm outside of school hours for the school district in which he or she resides, if such employment is with the consent of his or her parents or person standing in place of his or her parents, or his or her parent or such person is employed on the same farm, or if such employee is 14 years of age or older.

This section also amends section 16 by adding a new subsection subjecting violators of child labor provisions or regulations to a civil penalty not to exceed $100 for each violation.

Section 26. Suits by Secretary for Back Wages.—

This section amends section 16(c) to continue the authority to the Secretary of Labor to sue for back wages and adds a provision to also permit the Secretary sue for an equal amount of liquidated damages without requiring a written request from the employee and even though the suit might involve issues of law not finally settled by the courts. In the event the Secretary brings such an action, the right of an employee provided by section 16(b) to bring an action in his or her own behalf, or to become a party to such an action would terminate, unless such action is dismissed without prejudice. * * *

Section 27. Economic Effects Study.—

This section also directs the Secretary of Labor to conduct a continuing study on the means to prevent curtailment of employment opportunities among manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). A report of the results of such study shall be transmitted to the Congress one year after the effective date of the 1974 Amendments and thereafter at two-year intervals after such date. Such report shall include suggestions respecting the Secretary's authority under section 14 of the Act.

The House amendment contained no comparable provision.

The House receded.

Section 28. Nondiscrimination on Account of Age in Government Employment.—

This section amends section 11(b) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630(b)) by expanding its coverage from employers' with 25 or more employees to employers with 20 or more employees. This section also amends section 11(b) of the Age Discrimination in Employment Act to include within its scope coverage for State, and local government employees (other than elected officials and certain aides not covered by Civil Service). The annual authorization of appropriations ceilings is raised from $3 million to $5 million. A new section (Sec. 15) is also added to the Act prohibiting discrimination on account of age in Federal government employment with jurisdiction for enforcement assigned to the United States Civil Service Commission. Aggrieved persons may bring a civil action in any Federal district court of competent jurisdiction.

Questions have been raised about the applicability of the Age Discrimination provisions to the discretion which now may rest in the heads of certain executive agencies to terminate an employee in the interests of the national security of the United States.

It was not the intent of the conferees to affect the exercise of such discretion, other than by barring actions which, in fact, would be illegal, such as a termination of employment or a refusal to hire based on age.

Section 29. Effective Date.—This section sets the effective date of the Act, except as otherwise specifically provided as May 1, 1974.

Mr. WILLIAMS. Mr. President, I have been the chief sponsor of minimum wage legislation for 5 years, I have chaired the Labor Subcommittee and the full committee through over 100 hours of hearings, and through over 20 days of markup on this legislation. I have floor managed the bill three times in 3 years and now have served as chairman of the House-Senate conference on this legislation twice. The efforts have been thwarted, first by a blocked conference and then by a Presidential veto. But I will say to my colleagues in the Senate that the conferees on both sides made every possible effort to arrive at a minimum wage package which addresses some of the immediate needs of America's work force while insuring the degree of support which will guarantee that its provisions will go into effect on May 1, 1974.

Mr. President, I wish to take a moment to applaud my colleagues who were Senate conferees, particularly Senator JAVITS and Senator SCHWEIKER for their untiring efforts in this long and ardous struggle. I also want to recognize the sincere efforts of our colleagues on the House Committee on Education and Labor, both majority and minority, who worked long and hard with us to produce a conference report signed by all House and Senate conferees. It is our unanimous recommendation that the Senate agree to the report. I hope it will be done expeditiously.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. Mr. President, I know

that the Senator from Ohio and the Senator from Colorado, who are members of the committee, want to address themselves to this conference report, as does the Senator from New York (Mr. JAVITS), and while they are preparing their addresses let me suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. WILLIAMS. Take it out of my time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. TAFT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TAFT. I ask the Senator from Pennsylvania, who I believe is in control of the time, if he will yield me 5 minutes.

Mr. SCHWEIKER. I yield the Senator from Ohio such time as he may require.

Mr. TAFT. Mr. President, the Congress for the last 3 years has considered legislation to amend the Fair Labor Standards Act. This morning the Senate will undoubtedly adopt a conference report that may very well culminate congressional consideration of this issue for the immediate future. Numerous interest groups will undoubtedly fill their publications with the great virtues of the proposed amendments and claim a great victory for the American working men and women of this country. To a certain extent, this analysis will be correct as a constructive increment in the minimum wage is needed due to the inflationary pressures in the economy. As Senators DOMINICK, BEALL, and I, and many other Senators have maintained throughout consideration of this issue, an increase in the minimum wage is needed. What these interest groups and leading proponents of Labor and Public Welfare Committee proposals will fail to state, however, is that millions of American workers could have received increases in the minimum wage 2 or 3 years ago if constructive compromises could have been arrived at. When one suggests "compromise" on labor legislation it seems, however, that the word takes on a new meaning—either the positions of certain interest groups prevail or "compromise" is not available. This approach is not only inconsistent with the basic structure of our democratic process of government, but is also extremely detrimental to the interests of all Americans. The word "compromise" has been used this morning to describe the conference report before the Senate. Only in a very strained sense is this correct.

The wage rate structure adopted is that of the House. The series of minimum wage increments contained in the proposal establish a $2.30 minimum wage for agriculture and nonagriculture workers by 1978. The Senate adopted bill contained a $2.20 level with the committee arguing agalnst a $2.30 proposal I advanced on this floor. The inconsistency of the committee is difficult to rationally explain. Evidently for a lack of a better word to explain the committee's approach, the word "compromise" has been suggested.

Coverage of domestic service employees was also "compromised" by accepting both the House and Senate provisions. This approach makes absolutely no sense, as an employer may be subject to liability under the Fair Labor Standards Act if he only employs an individual perhaps 2 or 3 hours a week, notwithstanding the House 8-hour work-week test. The reason for this potential illegal action might arise is that the 8-hour House test is not an employer test, but an employee test. The administrative enforcement problems with regard to this approach will be considerable. Further, by adopting such an approach the constitutionality of coverage of domestic becomes even more suspect. I can see no rational basis by which the Interstate Commerce clause can cover such limited domestic employment situations. Litigation will undoubtedly arise as to the constitutional validity of this proposal.

The report is also deficient with respect to inclusion of a new special wage structure for youth. Both the House and Senate Labor Committees have failed to adopt broad new programs to respond to the towering rate of youth unemployment. The Senate committee refused to adopt the suggestions made by every economist who appeared before the committee on this issue. Two important ponts were agreed to with respect to youth, however, in the conference report. First, the conference adopted a study amendment that I had proposed to the Senate bill and to which the chairman has already alluded. This provision will direct the Secretary of Labor to conduct a continuing study on methods to prevent curtailment of employment opportunities among manpower groups which have had historically high incidences of unemployment—such as disadvantaged minorities, youth, and the elderly. Such a study will permit the Secretary to further analyze his existing broad authority under section 14 of the act.

Second, the Senate in receding to the House on this issue made constructive provisions in the historic ratio test and adopted the House report language permitting a comprehensive demonstration project to be conducted by the Secretary of Labor with regard to a youth differential. Such an approach will permit the Secretary to implement existing broad authority under section 14 in the act and will clarify any misinterpretations that the Secretary did not have legal authority to establish such programs.

Compromise, it has been suggested, was reached on overtime coverage for firemen and policemen. While statistically this may be true, philosophically it is not. The conferees adopted a phase-in procedure whereby firemen and policemen will be subject to overtime coverage for all hours worked over 60 by January 1, 1975, with a continuing phase-in down to at least 54 hours by January 1, 1978. An exemption is also contained with respect to fire and police departments having five or fewer employees. As the Senator from New Jersey (Mr. WILLIAMS) has stated the report also contains provisions with respect to a study that is to be conducted by the Secretary of Labor. This study will determine the prevailing work practices of firemen and policemen and apply the findings to the standard to be implemented in 1978.

It is interesting to note that the conferees accepted a study approach on this point, as Senators DOMINICK, BEALL, and I have been stressing for over 3 years the need for more information as to the potential effects of proposed amendments to the act. Particularly, it is interesting to note that notwithstanding all the assertions that available information was obtained by the committee, no accurate information was available to the conference with respect to the current hourly average workweek of firemen and policemen. In all due respect to the committee chairman I believe his statements were not correct in arguing against the study amendments that I proposed on this floor during consideration of the Senate bill.

The conference report phases in minimum wage overtime exemptions for small retail establishments doing less than $250,000 annual sales. The House receded to the Senate provisions on this point and while such a phase-in is preferable to both the reported Senate bill and the reported House bill, I still fear disruption of business and jobs due to the rapidity by which such coverage is extended.

Mr. President, this body currently is considering the subject of campaign and election law reform. The deliberations, particularly during the conference committee, certainly underscore the need for constructive improvements in this area. Interest groups exercised an inordinate amount of control and at points during the conference deliberations resembled more an old time State legislative hearing, than the U.S. Congress. Some conferees did not even consider suggested compromise proposals without running into the hall or an adjacent room to consult with interest groups. The final session of the conference was scheduled with only an hour's notice to most Senators and Congressmen and only two Senate and four House conferees were present. In fact, interest group representatives outnumbered conferees almost 4 to 1 at that session. I hope that campaign reform and election law reform measures we are considering will take this experience into consideration.

Notwithstanding these objections, I will vote for the conference report this morning as I do not believe millions of American working men and women should be further precluded from receiving a needed increase in minimum wage.

Mr. President, I would like to pay tribute to the work of the minority staff on this issue including Bob Bohan and Roger King of the committee and Joe Carter on the staff of Senator BEALL. I also would like to thank Charles Woodruff, formerly of the minority committee staff, for his assistance during the last two sessions of Congress on this issue.

Mr. JAVITS. Mr. President, will the distinguished Senator from New Jersey yield me 10 minutes?

Mr. WILLIAMS. I yield the Senator from New York such time as he may require.

The PRESIDING OFFICER (Mr. ABOUREZK). The Senator from New York is recognized.

Mr. JAVITS. Mr. President, this is a measure which should have been passed 3 years ago. Senator WILLIAMS and I offered a minimum wage bill at that time. This is the end of a long and arduous road. It is deeply gratifying that at long last we have reached agreement.

I speak now as a ranking member of the minority. I have every reason to believe that the President will sign the bill. I am informed as recently as a few minutes ago that the conference report is supported by the administration.

Mr. President, I am very grateful to Senator TAFT and to Senator DOMINICK who had grave reservations about this matter. Senator WILLIAMS, as is usual, with great specificity, explained it to the Senate. It fits into the larger interests, at long last, of realizing some gain for the low-wage worker, and when one realizes that Senator WILLIAMS has made this clear many times that the way minimum wage would, right now, be $2.17 if we were simply compensating for depreciation in the value of the dollar and a rise in the similar price index at the $1.60 rate, how much behind the times we are even in setting the $2 rate.

I point out, too, that unless the matter is done immediately—and I mean immediately, within a matter of hours—there is grave danger that it could not take effect on May 1, which was our intention.

The details of the bill have already been described. I wish just to make two comments. There are two very important provisions of the act. One relates to humanity and the other relates to a broad common experience with respect to the extraordinary breakthroughs we have now made in covering domestics who are employees and will be covered by the minimum wage, and Government employees at the municipal and State levels.

Now the humanities provision relates to child labor. For a long time I have joined Senator WILLIAMS, and together we have tried to outlaw child labor on the farms. We have not yet succeeded. Agriculture is one of the most hazardous occupations as shown by the accident rates, but we have made some progress, which is worth noting in this bill. Let us remember also that it is decades since child labor was eliminated in industrial employment. What we have done now is to outlaw the labor of children under 12 on farms, which means the 500-man day test. Under the law, these farms which employ hired workers for more than 500-man days a year.

This relates to the so-called commercial farm where the greatest exploitation of children has taken place. We, at long last, are prohibiting it. Regulations regarding those up to 14 and then up to 16 are also provided in this conference report. Of course, we have already previously prohibited a hazardous occupation in agriculture although they are all hazardous, but this is unusually hazardous for those who are under 18. So this is a marked step forward.

The other matter, Mr. President, which should be reassuring to those who will be, for the first time, subject to that part of the law which relates to the coverage on domestics is that although we have established an 8-hour test—that is an 8-hour week—for such employees with respect to coverage under the minimum wage, we have also in the report of the manager of the bill, made it clear that we expect the regulations to be promulgated under the law which will require, and I quote from page 28 of the manager's report:

> Will require that employers are reasonably apprised of when their obligations regarding the payment of minimum wage commence.

It was properly pointed out that the aggregate of 8 hours means 8 hours per week worked by a person in domestic employment for more than one employer, but not necessarily the one employer. The one employer would have the right to be concerned as to whether the domestic he is employing is or is not under the minimum wage law.

We expect—and I emphasize this—the Secretary to deal with that question affirmatively; that is, that the employer must be reasonably apprised in connection with the regulations.

Mr. President, I think this is a well-balanced report, the very best that could be done, considering the views of the House and the Senate, following the long delay, the period of makeup we now have to pursue in respect of a minimum wage which makes some sense in terms of the times. I am very gratified that there is every reason now to believe that the President will sign this bill.

I wish to join the chairman and cosponsor of the measure in thanking all members of our committee for their tremendous cooperation, particularly the conferees; and in congratulating, for their work far beyond the call of duty, Jerry Fader of the majority and Gene Mittelman of the minority, the staff members who fashioned the technical aspects of the bill.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, will the Senator from New Jersey yield me about 10 minutes?

Mr. WILLIAMS. What is the time situation, Mr. President?

The PRESIDING OFFICER. The Senator from New Jersey has 3 minutes; the Senator from Pennsylvania has 15 minutes.

Mr. DOMINICK. Will the Senator from New York yield me 5 minutes?

Mr. JAVITS. I yield 10 minutes to the Senator from Colorado out of the 15 that the minority has.

Mr. DOMINICK. I thank the Senator from New York.

Mr. President, for 3 years now we have been working at raising the minimum wage as it applies to 49.4 million workers in this country. I have dissented from the majority of this body during that time, but I have not, and I emphasize have not, objected to the principle of raising the minimum wage for those workers already covered. Since 1972, the majority of the committee and Senators TAFT, BEALL, and I have come very close to agreement on the wage rate structure which should go into effect under the minimum wage. The debate rather has centered around extensions of coverage, repeal of exemptions and a differential wage structure for youth.

Now for the second time in less than a year we are faced with a conference report on minimum wage. I have strong reservations about this bill. In the first place, the youth differential once again has not received the attention that I believe it should. The youth unemployment figures in this country are appalling, and I firmly believe that the sure way to alleviate this problem is through specialized wage structures for youth. I note and I approve of the conference making adjustments in the historic ratio test for student employment and of the language allowing for one demonstration project for a youth differential. This, of course, is some improvement over the Senate bill. I am hopeful that immediate implementation of this project will give some basis upon which to resolve the difficult and controversial issue. However, I am fearful that this is not enough, and the results of the bill in this regard may be detrimental rather than beneficial for our Nation's youth.

Second, the conference report adopts alternative tests for triggering coverage of domestic workers. My views on the domestic coverage, I believe, have been quite clearly stated on this floor. For the life of me, I do not understand why we have chosen to ignore the testimony of the Secretary of Labor, Mr. Brennan, that such coverage will in the end probably increase unemployment among domestic workers in this country. To quote in part:

> In other areas of smaller cities and towns, domestics receive considerably less than the present minimum. The problem with applying the minimum wage to them has, as analysis clearly shows, a severe disemployment effect. This would reduce the income of many families where a member was employed either full-time or part-time in household work. Domestic service is in some respects unique from other forms of employment. A household who hires a maid typically has just so much budgeted for that purpose with no more available. She also has no opportunity to pass on any higher wage cost. If it comes down to it, the housewife can substitute her labor and that of other family members for the domestic. Few employers in other fields can do so.

In addition, the constitutionality of this coverage is definitely questionable. Congress can only regulate activities which are entirely intrastate only so long as there is a "rational basis" for a finding that the activity affects interstate commerce in a substantial way. If domestic employees who make beds, dust, and wash windows or mow lawns in private residences are engaged in interstate commerce, there is nothing left of intrastate activities. If someone who vacuums your carpet or mows your lawn is engaged in interstate commerce or is considered to have a substantial impact on interstate commerce, then this clause now encompasses every aspect of American life.

Finally, Mr. President, the question of overtime for firemen and policemen is of concern to me. I believe that the conference report is an improvement over what we had in the Senate. I might say that the three or four cities we checked out in Colorado figure that for at least 2 years this is all right, but we have not been able to get in touch with smaller communities where a full-time fire department or police department is still in effect.

The compromise effected provides a limited amount of protection for municipalities which will be faced with increased costs for compensating these workers. I have checked with three or four of the municipalities in my State and with their police and firemen and although they will not be immediately affected they may at a later date. I am encouraged by the leadtime given to affected municipalities and the police and firemen involved because of the delayed implementation of this section.

Mr. President, this body and our friends on the House side have faced minimum wage for 3 years now. There are few, if any, Members that I know of who would seriously argue that the $1.60 per hour standard is "keeping up with the times." All of us have been inundated by complaints about the rising cost of living. The housewife who buys groceries and the driver who fills his tank with gas would qualify as experts to tell us about how far $1.60 an hour goes on March 28, 1974. I too, have observed the rising costs of living, but I am not going to bother boring my colleagues with the statistics all of them have heard.

This bill implements a $2 minimum, a minimum which would be in effect today already if our amendment of 1972 had been enacted into law. The differences which have divided us over these last 3 years have been set forth and enunciated. On some of them we have reached some compromise, and on others the majority has prevailed. I have observed the overwhelming vote by the Members of the House of Representatives in support of an increase in minimum wage, and I now feel that the issue which each of us must confront is whether or not erosions of the dollar earned by those 49.4 million workers of this country mandates that I set aside my strong reservations about other parts of the bill to insure a minimum wage increase this year. The conference report is better than the bill which I voted against earlier. I would, of course, have liked to have seen other changes. However, I believe that this report presents the best compromise that those of us who have differed with the majority have been able to achieve since this debate began. As such, it then offers the best chance we have had to effect an increase in the minimum wage, an increase which I have acknowledged on many occasions is justified.

I will, therefore, while acknowledging grave reservations about some parts of this bill and expressing concern that the constitutional issue may invalidate all or part of the bill, vote for passage so that minimum wage eroded by inflation will now be increased to more acceptable levels.

Mr. President, I would also like to commend the work performed during the long history of this increase in the minimum wage by three members of the minority staff of the Senate Labor Committee. Those three are: Chuck Woodruff, Roger King, and Robert Bohan.

Mr. MANSFIELD. Mr. President, will the Senator yield to me for one-half minute?

Mr. DOMINICK. I yield back my time.

Mr. JAVITS. I yield to the Senator from Montana.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the conference report.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that it be in order at this time to ask for the yeas and nays on the first Allen amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, I yield 5 minutes out of the time of the minority leader to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from New York has 7 minutes total remaining and the Senator from New Jersey has 3 minutes remaining.

Mr. JAVITS. Mr. President, I yield 3 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SCHWEIKER. Mr. President, I thank the distinguished Senator from New York and the ranking member on the Republican side of the committee for yielding this time. I will not take much time because I think we have pretty well enunciated the issues and the problems involved. I join with the chairman and the ranking member of my committee in saying that it is unfortunate that this bill comes 3 years too late.

Many Americans have been forced beyond the bounds of reason in not being able to meet the inflationary spiral and the pressures of our times. I do not believe this bill is inflationary because at the very least we are catching up with what inflation has wrought in terms of the lower economic groups in our society and we are not even catching up to what the cost of living factor has been over that time frame. If we use another factor, which is the percent of the minimum wage, the average hourly wage in the United States, which at one point when the last change was made was at a 60 percent ratio, and we are not putting them to that 60 percent, they are still below the relationship that existed at the time the last minimum wage bill was passed. So this bill does not meet the inflation test or the relationship to the hourly average earnings of all workers. I think the legislation is a key step and will help many millions of Americans who are at the poverty level and below the poverty level to try to make ends meet.

One of the chief problems of the conference was the matter of whether or not to include firemen and policemen in this coverage. For the first time we have really addressed ourselves to the problem. This was one of the main contentions of the conference committee on which I served.

One of the reasons for the strong differences between the House and Senate was, as the Senator from Ohio pointed out, there is a lack of knowledge of the practices, of the hours of work and patterns of work that firemen particularly have in their jobs.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JAVITS. Mr. President, I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 2 additional minutes.

Mr. SCHWEIKER. One of the real important features of this legislation is the acceptance of the suggestion made by the Senators from Ohio, Colorado, and Maryland to make a study so that we know, for instance, that some companies require the firemen to sleep at the firehouse and others do not. Hence the discrepancy. We did the best we could under the circumstances for the first time to bring them under coverage on a three-step basis, over 3 years, and then the fourth step will be based on the practice throughout the United States. I think this is a fair way to eliminate much of the argument. By the fourth year we will have the facts and we will set all firemen in accordance with the average practice in the United States. We will do the same for policemen. This is a significant advancement for firemen and policemen. They are long overdue members of our society and they should have been recognized some time ago for the role they perform as they risk their lives and limbs for us and we have not even covered them up to this date.

I am pleased to strongly support the conference report.

Mr. BENTSEN. Mr. President, the conference report on this minimum wage bill represents the culmination of 3 years of effort by the Congress to increase the living standards of millions of American workers.

In 1972, a minimum wage bill passed both House of Congress but never went to conference. Last year, a similar bill was unwisely vetoed by the President. This year, we have a minimum wage bill that should be signed into law promptly.

It has been some 8 years since the Congress has enacted legislation on the minimum wage. Between 1966 and 1973, the Consumer Price Index rose 42.5 percent; between February 1, 1968, the date the $1.60 minimum wage became effective for the majority of those covered, and December 1973, the rise was 35.4 percent.

For middle-income Americans, average hourly earnings have increased 45 percent since February 1968, and by 60 percent since 1966.

This legislation is directed to workers at the very bottom of the economic

ladder. I believe it is time that these American workers received a break, and I strongly support this minimum wage increase.

It is unconscionable for this Nation to have a minimum wage which yields an income fully $1,300 below the poverty level for an urban family of four. In view of the inflation which we have witnessed in the last 12 months the wage levels in this bill are now essential.

Another provision in which I have been interested for several years is the section extending the Age Discrimination in Employment Act to Federal, State, and local employees. Although I introduced this measure in March 1972, and it has passed the Senate on two occasions, it has not, until now, emerged from a House-Senate conference.

The passage of this measure insures that Government employees will be subject to the same protections against arbitrary employment based on age as are employees in the private sector. I am pleased that this long struggle is now ending, and that this provision will be written into law.

This legislation is literally a bread-and-butter issue for millions of American workers. We cannot afford to delay it any longer. I urge the President to sign it into law.

Mr. KENNEDY. Mr. President, I rise in support of the conference on the minimum wage bill and urge the Senate to approve it once more.

The 7 million workers who would be covered for the first time by the provisions of the minimum wage law have been suffering for the past 6 months because of the veto of the earlier bill approved by the Congress. The other millions of workers who have been receiving the minimum wage have been suffering as well because they have no means to defend themselves against the rising cost of living.

A year ago, we sought to take a modest step to raise the minimum wage for those workers on the bottom rung of the economic ladder in this country. For them, the rate of inflation since 1968, when the current $1.60 per hour minimum wage level took effect, has cut their purchasing power by more than a third. It would take a $2.17 per hour minimum wage just to match the rate of inflation since then.

Last summer, our bill attempted to provide that minimal protection to these workers but it was vetoed and we were unable to override the veto.

Ever since, we have been attempting to convince the administration to remove its opposition to a decent minimum wage, to remove its opposition to the coverage of domestic workers and to remove its opposition to protecting the rights of younger workers. Hopefully, the conference report now before us will be seen for what it is, a modest attempt to provide basic equity to millions of American workers.

The bill increases the minimum wage from $1.60 per hour to $2 immediately, to $2.10 on January 1, 1975, and $2.30 per hour on January 1, 1976.

In addition, it provides greater protection for domestic employees and raises the level of payment for farmworkers as well. Unfortunately, the law still excludes the vast number of farmworkers from coverage.

Similarly, while this bill does provide major new benefits compared to existing law, it does not offer as adequate wage increases as I would have wished.

The minimum wage clearly should permit individuals to receive income sufficient to live decently. Yet, today, the Department of Labor estimates the annual poverty level income for a family of four at $4,540 in 1973. The $1.60 per hour minimum wage provides only $3,200 and even our initial increase to $2 per hour will only yield a $4,000 annual income. Only when the final $2.30 per hour goes into effect on January 1, 1976, will we have provided income beyond what is today considered the poverty line.

This bill is a major step forward and it should be supported and approved. But we must recognize at the same time that more still remains to be done.

Mr. BUCKLEY. Mr. President, I would like briefly to comment upon the conference report on S. 2747, Fair Labor Standards Amendments of 1974. I will not vote in favor of it because once again the Congress has failed to come to grips with the now well-documented impact of a rise in minimum wage levels on teenagers seeking to enter the labor market for the first time. Without a youth differential provision, the bill will make it still harder for young people, especially those from disadvantaged backgrounds, to find jobs.

It is ironic that the bill acknowledges today's very serious 15.6 percent unemployment rate of American youth by incorporating a provision that will authorize the payment of less than the applicable minimum wage for students who have been issued work certificates. Yet the bill ignores the dilemma of the hundreds of thousands of teenagers who have quit school and are frozen out of jobs because no exception is made in their case.

An explanation of this tragic effect is simple. The school "drop-outs" contain a high percentage of young people (especially non-whites who in turn have an unemployment rate close to 30 percent) who have not yet acquired the elementary skills and work habits that enable them to justify receipt of the minimum wage.

Not to belabor my point, I would simply like to once again state a simple, well-documented economic fact of life—employers pay workers according to their productivity. Most American workers are highly productive, and therefore earn considerably more than the minimum wage. But too many young people are not particularly skilled and are therefore only marginally productive. Therefore, they are the first to go when employers are forced to pay them more than their productivity will justify; and in the process they are deprived of the basic opportunity for learning the skills and habits that will justify higher wages; namely, through on the job experience.

Ironically, the conference report directs the Secretary of Labor to conduct a continuing study on the means to prevent curtailment of employment opportunities among manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities youth, et cetera). Yet the simple act of raising the minimum wage without making special provison for the young is already known to be a root cause of displacing these people from their jobs.

The pious declarations of social concern that so often accompany and obscure minimum wage debates may be politically satisfying to some. But such declarations ignore the economic fact of life, and, as so often happens when we try to repeal the laws of economics by Federal decree, the intended beneficiary becomes the victim.

Mr. President, I will not vote for a bill that will have the predictable effect of making it still harder for our neediest young people to become self-supporting, self confident citizens.

Mr. DOLE. Mr. President, I am pleased to support the conference report on the minimum wage bill, because I believe it represents a satisfactory and constructive resolution of a number of difficult and complex issues.

The minimum wage law has some of the broadest effects of any statute on the books. It primarily seeks to assure a decent living for the American workingman and woman. But through its application, it influences many aspects of our country's complex economy reaching beyond mere rates of pay and hours of labor. This law has a substantial impact on the decisions of business management, government, and private individuals. And thereby, it shapes the employment opportunities available to those in many age brackets and with varying degrees of training. Ultimately, of course, its effects are felt by the taxpayers and consumers at the end of the economic line.

As the history of this legislation demonstrates, this is a very difficult area, so the conferees are to be commended for their success in shaping an agreement which appears to have broad support.

The conference report embodies the traditional concern we have had in this country for the well being of working people. A living wage for a fair day's work is a hallmark of the American economic philosophy. The bill also recognizes the special circumstances in the situations of students, police, and firefighting personnel, and certain household employees. And the adjustments in these areas should be broadly acceptable to all concerned.

I believe that the business community will find more at this bill acceptable—that it is responsive to the concerns and circumstances of many employers—particularly small enterprises.

And, most importantly, I feel the conference report is responsible in its overall economic impact which will affect not only workers and employers, but every taxpayer and consumer in the country.

Mr. JAVITS. Mr. President, I ask unanimous consent that Gene Mittelman and David Dunn may be granted the privilege of the floor during the consideration of the conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I am prepared to yield back the remainder of my time.

Mr. WILLIAMS. I yield back our time.

The PRESIDING OFFICER. The agreement provides for the vote to occur at 11:30 a.m. The unanimous-consent agreement could be changed by unanimous consent.

Mr. JAVITS. We yield back our time.

Mr. GRIFFIN. What is the change in the agreement?

Mr. JAVITS. No change. We merely want to yield back our time. We have no further speakers; unless we have a quorum call before the vote.

Mr. GRIFFIN. The Senator can suggest the absence of a quorum.

Mr. JAVITS. We have only 3 minutes.

Mr. GRIFFIN. We can call it off.

Mr. JAVITS. Mr. President, I do not yield back my time. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the hour of 11:30 having arrived, the vote on the conference report is now in order. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Alaska (Mr. GRAVEL), the Senator from Wyoming (Mr. MCGEE), the Senator from Minnesota (Mr. MONDALE), and the Senator from Rhode Island (Mr. PASTORE) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from Minnesota (Mr. MONDALE), the Senator from Alaska (Mr. GRAVEL), the Senator from Arkansas (Mr. FULBRIGHT), and the Senator from Wyoming (Mr. MCGEE), would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from Maryland (Mr. MATHIAS), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Oregon (Mr. HATFIELD) is absent on official business.

I further announce that the Senator from Vermont (Mr. AIKEN) is absent due to illness in the family.

I further announce that, if present and voting, the Senator from Vermont (Mr. AIKEN), the Senator from Oregon (Mr. HATFIELD), the Senator from Maryland (Mr. MATHIAS), and the Senator from Maryland (Mr. BEALL) would each vote "yea."

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND) would vote "nay."

The result was announced—yeas 71, nays 19, as follows:

[No. 91 Leg.]

YEAS—71

Abourezk	Gurney	Nelson
Allen	Hart	Nunn
Baker	Hartke	Packwood
Bayh	Haskell	Pearson
Bellmon	Hathaway	Pell
Bentsen	Hollings	Percy
Bible	Huddleston	Proxmire
Biden	Hughes	Randolph
Brooke	Humphrey	Ribicoff
Burdick	Inouye	Roth
Byrd, Robert C.	Jackson	Schweiker
Cannon	Javits	Scott, Hugh
Case	Johnston	Sparkman
Chiles	Kennedy	Stafford
Church	Long	Stevens
Clark	Magnuson	Stevenson
Cook	Mansfield	Symington
Cranston	McGovern	Taft
Dole	McIntyre	Talmadge
Domenici	Metcalf	Tunney
Dominick	Metzenbaum	Weicker
Eagleton	Montoya	Williams
Fong	Moss	Young
Griffin	Muskie	

NAYS—19

Bartlett	Curtis	Hruska
Bennett	Eastland	McClellan
Brock	Ervin	McClure
Buckley	Fannin	Scott, William L.
Byrd, Harry F., Jr.	Goldwater	Stennis
Cotton	Hansen	Tower
	Helms	

NOT VOTING—10

Aiken	Hatfield	Mondale
Beall	Mathias	Pastore
Fulbright	McGee	Thurmond
Gravel		

So the conference report was agreed to.

Mr. JAVITS. Mr. President, I move that the Senate reconsider the vote by which the conference report was agreed to.

Mr. WILLIAMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, I congratulate the Senate on approval of the conference report on S. 2747, the minimum wage bill. The minimum wage of $1.60 an hour has not been increased since 1968. Since that time inflation has pushed the cost of living up 33 percent.

Today's vote is the third time in less than 2 years that the Senate has approved an increase in the measure of economic dignity for those working Americans at the bottom of the economic ladder. On one occasin the other body refused to go to conference and on the other, our efforts were vetoed by the President.

I strongly urge the President to sign this bill into law.

S. 2747 fully reflects the will of Congress and the public. Its provisions have been thoroughly examined in committee in both Houses. It has been debated many hours. Every controversial point has been tested by a vote in the Senate. The differences between the two bodies have been fairly compromised. It is a fine bill and should become law.

I also want to thank our chairman, Senator WILLIAMS, for his outstanding leadership and perseverance in bringing this difficult piece of legislation safely through once again. It is my strongest hope that this time we will see our efforts rewarded by becoming law.

UNANIMOUS-CONSENT AGREEMENTS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that following the vote on the first Allen amendment there be a limitation of 1 hour on the Hathaway amendment, to be equally divided between the distinguished Senator from Maine (Mr. HATHAWAY) and the minority leader or whomever he may designate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. I ask unanimous consent that it be in order at this time to ask for the yeas and nays on that amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that it be in order at this time to ask for the yeas and nays on the second Allen amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that following the disposition of the second Allen amendment, the amendment to be offered by the distinguished Senator from Texas (Mr BENTSEN) may follow, and that there be a time limitation of 30 minutes on that amendment, the time to be equally divided.

Mr. GRIFFIN. Mr. President, reserving the right to object, I am not familiar with the Bentsen amendment.

Mr. COOK. Mr. President, I am familiar with the Allen amendments, but I am not familiar with the Bentsen amendment, either. I wonder if the majority leader would consider holding that one in abeyance.

Mr. MANSFIELD. Yes; I withdraw the request.

Mr. ALLEN. Mr. President, the Senator from Texas, in conversation with me, said that his amendment provided that no foreigner could contribute to election campaigns It is a recommendation, I believe, that the President made.

Mr. COOK. May I say to the Senator from Alabama, I would think an amendment of that nature could be adopted unanimously by a voice vote, and that it would not be necessary to have a rollcall or to have time for debate.

Mr. MANSFIELD. I will discuss that later.

Then I understand that following the disposition of the Bentsen amendment, the third Allen amendment for today will be offered.

Mr. ALLEN. That suits me.

Mr. MANSFIELD. If I may have the attention of the minority leader and the ranking member of the Rules Committee, the Senator from Alabama has indicated that he would be willing to consider a 30-minute limitation on the third amendment on the same basis as the other two. I understand that the amendment has to do with the positions of the Members of the 93d Congress who will be running for office this year.

Mr. ALLEN. Running for the Presidency?

Mr. COOK. I have no objection to that.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE PROGRAM

Mr. MANSFIELD. Mr. President, I remind the Senate that we have a vote on the extradition treaty with Denmark at 12 o'clock tomorrow. There is a rumor going around that that would be the only business tomorrow. However, it is the intention of the joint leadership to consider amendments to the pending business, and it is anticipated that there will be yea and nay votes in addition to the vote on the treaty of extradition.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. HUDDLESTON) laid before the Senate, messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of Senate proceedings.)

FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974

The PRESIDING OFFICER (Mr. ABOUREZK). Under the previous order, the Chair lays before the Senate the unfinished business, S. 3044, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 3044) to amend the Federal Election Campaign Act of 1971 to provide for public financing of primary and general election campaigns for Federal elective office, and to amend certain other provisions of law relating to the financing and conduct of such campaigns.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. The pending question is on agreeing to the amendment (No. 1109) of the Senator from Alabama (Mr. ALLEN), which the clerk will state.

The assistant legislative clerk proceeded to read the amendment.

Mr. ALLEN's amendment (No. 1109) is as follows:

On page 3, line 6, strike out "FEDERAL" and insert in lieu thereof "PRESIDENTIAL".

On page 4, line 6, strike out the comma and insert in lieu thereof a semicolon.

On page 4, beginning with line 7, strike out through line 12.

On page 4, line 13, strike out "(5)" and insert in lieu thereof "(4)".

On page 4, line 17, strike out "(6)" and insert in lieu thereof "(5)".

On page 5, line 6, strike out "any".

On page 5, line 21, immediately before "Federal", strike out "a".

On page 7, line 3, strike out "(1)".

On page 7, beginning with "that—" on line 5, strike out through 7 no page 8 and insert in lieu thereof "that he is seeking nomination for election to the office of President and he and his authorized committees have received contributions for his campaign throughout the United States in a total amount in excess of $250,000.".

On page 9, line 6, after the semicolon, insert "and".

On page 9, strike out lines 7 and 8 and insert in lieu thereof the following: "(2) no contribution from".

On page 9, beginning with "and" on line 13, strike out through line 19.

On page 10, beginning with "(1)—" on line 3, strike out through line 16 and insert in lieu thereof the following: "(1), no contribution from any person shall be taken into account to the extent that it exceeds $250 when added to the amount of all other contributions made by that person to or for the benefit of that candidate for his primary election.".

On page 13, beginning with line 16, strike out through line 18 on page 14 and insert in lieu thereof the following:

"SEC. 504. (a) (1) Except to the extent that such amounts are changed under subsection (f) (2), no candidate may make expenditures in any State in which he is a candidate in a primary election in excess of the greater of—

"(A) 20 cents multiplied by the voting age population (as certified under subsection (g)) of the State in which such election is held, or

"(B) $250,000.".

On page 14, line 19, strike out "(B)" and insert in lieu thereof "(1)" and strike out "subparagraph" and insert in lieu thereof "paragraph".

On page 14, line 20, strike out "(A)" and insert in lieu thereof "(1)".

On page 15, line 8, beginning with "the greater of—", strike out through line 17 and insert in lieu thereof "15 cents multiplied by the voting age population (as certified under subsection (g)) of the United States.".

On page 18, beginning with line 10, strike out through line 20.

On page 26, lines 2 and 3, strike out "under section 504 of the Federal Election Campaign Act of 1971, or".

On page 71, beginning with line 20, strike out through line 2 on page 73 and insert in lieu thereof the following:

"(a) (1) Except to the extent that such amounts are changed under subsection (f) (2), no candidate (other than a candidate for nomination for election to the office of President) may make expenditures in connection with his primary election campaign in excess of the greater of—

"(A) 10 cents multiplied by the voting age population (as certified under subsection (g)) of the geographical area in which the election for such nomination is held, or

"(B) (i) $125,000, if the Federal office sought is that of Senator, or Representative from a State which is entitled to only one Representative, or

"(ii) $90,000, if the Federal office sought is that of Representative from a State which is entitled to more than one Representative.

"(2) (A) No candidate for nomination for election to the office of President may make expenditures in any State in which he is a candidate in a primary election in excess of two times the amount which a candidate for nomination for election to the office of Senator from that State (or for nomination for election to the office of Delegate in the case of the District of Columbia, the Virgin Islands, or Guam, or to the office of Resident Commissioner in the case of Puerto Rico) may expend in that State in connection with his primary election campaign.

"(B) Notwithstanding the provisions of subparagraph (A), no such candidate may make expenditures throughout the United States in connection with his campaign for that nomination in excess of an amount equal to 10 cents multiplied by the voting age population of the United States. For purposes of this subparagraph, the term 'United States' means the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, Guam, and the Virgin Islands and any area from which a delegate to the national nominating convention of a political party is selected.

"(b) Except to the extent that such amounts are changed under subsection (f) (2), no candidate may make expenditures in connection with his general election campaign in excess of the greater of—

"(1) 15 cents multiplied by the voting age population (as certified under subsection (g)) of the geographical area in which the election is held, or

"(2) (A) $175,000, if the Federal office sought is that of Senator, or Representative from a State which is entitled to only one Representative, or

"(B) $90,000, if the Federal office sought is that of Representative from a State which is entitled to more than one Representative.

"(c) No candidate who is unopposed in a primary or general election may make expenditures in connection with his primary or general election campaign in excess of 10 percent of the limitation in subsection (a) or (b).

"(d) The Federal Election Commission shall prescribe regulations under which any expenditure by a candidate for nomination for election to the office of President for use in two or more States shall be attributed to such candidate's expenditure limitation in each such State, based on the voting age population in such State which can reasonably be expected to be influenced by such expenditure.

"(e) (1) Expenditures made on behalf of any candidate are, for the purpose of this section, considered to be made by such candidate.

"(2) Expenditures made by or on behalf of any candidate for the office of Vice President of the United States are, for the purposes of this section, considered to be made by the candidate for the office of President of the United States with whom he is running.

"(3) For purposes of this subsection, an expenditure is made on behalf of a candidate, including a Vice Presidential candidate, if it is made by—

"(A) an authorized committee or any other agent of the candidate for the purposes of making any expenditure, or

"(B) any person authorized or requested by the candidate, an authorized committee of the candidate or an agent of the candidate to make the expenditure.

"(4) For purposes of this section an expenditure made by the national committee of a political party, or by the State committee of a political party, in connection with the general election campaign of a candidate affiliated with that party which is not in excess of the limitations contained in subsection (1), is not considered to be an expenditure made on behalf of that candidate.

"(f) (1) For purposes of paragraph (2)—

"(A) 'price index' means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics, and

"(B) 'base period' means the calendar year 1973.

"(2) At the beginning of each calendar year (commencing in 1975), as necessary data become available from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Federal Election Commission and publish in the Federal Register the percentage difference between the price index for the twelve months preceding the beginning of such calendar year and the price index for the base period. Each amount determined under

S.2141

Pg. 55

Calendar No. 666

93D CONGRESS
2d Session

SENATE

REPORT
No. 93-690

FAIR LABOR STANDARDS AMENDMENTS OF 1974

FEBRUARY 22, 1974.—Ordered to be printed
Filed, under authority of the order of the Senate of February 21, 1974

Mr. WILLIAMS, from the Committee on Labor and Public Welfare, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 2747]

The Committee on Labor and Public Welfare, to which was referred the bill (S. 2747) to amend the Fair Labor Standards Act of 1938, as amended, to extend its protection to additional employees, to raise the minimum wage to $2.20 an hour, and for other purposes, having considered the same, reports favorably thereon with amendments, and recommends that the bill as amended do pass.

SUMMARY

The present minimum wage of $1.60 an hour was established by amendments to the Fair Labor Standards Act enacted in 1966. For most workers the $1.60 rate went into effect on February 1, 1968 (an interim raise from $1.25 to $1.40 was effective February 1, 1967). For newly covered non-farmworkers (employees of medium-size retail and service establishments and certain state and local government employees), the rate increased from $1.00 per hour effective February 1, 1967, by 15¢ per hour per year, until the $1.60 rate was reached February 1, 1971. For farmworkers, the rate of $1.00 was established effective February 1, 1967, with increases of 15¢ per year until the present rate of $1.30 was reached, effective February 1, 1969.

The purpose of this bill is to incorporate into the Fair Labor Standards Act a breadth of coverage and a minimum wage level sufficient to bring the Act closer to meeting its basic, stated objective—the elimina-

tion of "labor conditions detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency and general well being of workers."

The bill seeks to achieve this purpose by extending the law beyond the 49.4 million currently covered employees to almost 7 million additional workers employed in retail and service industries, Federal, State and local government activities, on farms and as domestics in private homes, and by increasing the minimum wage in steps to $2.20 an hour as follows:

	Effective date	12 months later	24 months later	36 months later
Pre-1966 coverage	$2.00	$2.20		
Coverage by 1966 amendments:				
Federal	2.00	2.20		
State and local	1.80	2.00	$2.20	
Other private nonfarm	1.80	2.00	2.20	
Farmworkers	1.60	1.80	2.00	$2.20
Coverage by 1974 amendments:				
Nonfarm	1.80	2.00	2.20	
Farmworkers	1.60	1.80	2.00	2.20

The Committee bill extends minimum wage coverage to the following additional workers:

ESTIMATED NUMBER OF NONSUPERVISORY EMPLOYEES BROUGHT UNDER THE MINIMUM WAGE PROVISIONS OF THE FAIR LABOR STANDARDS ACT BY S. 2747 (WILLIAMS-JAVITS BILL)

[In thousands]

Industry	Presently covered by the minimum wage provisions of the FLSA	Exempt or not covered by minimum wage provisions of the FLSA		
		Total	Covered by S. 2747 [1]	Not covered by S. 2747
All industries	49,427	14,625	6,877	7,748
Private sector	45,898	9,546	1,798	7,748
Agriculture	513	719	25	694
Mining	568	5		5
Contract construction	3,608	17		17
Manufacturing	17,524	104	42	62
Transportation and public utilities	4,104	77		77
Wholesale trade	2,683	8		8
Retail trade	7,149	3,866	587	3,279
Finance, insurance, and real estate	2,662	151		151
Service industries (except private households)	7,087	2,539	126	2,413
Private households		2,060	1,018	1,042
Public sector	3,529	5,079	5,079	
Federal Government	615	1,693	1,693	
State and local government	2,914	3,386	3,386	

[1] No estimates have been prepared of the number of employees of conglomerates with annual sales of more than $10,000,000 who would be brought under the act by S. 2747.

Note: Estimates exclude 2,147,000 outside salesmen and relate to May 1973 for agriculture, October 1973 for education and September 1973 for all other industries.

Despite this added coverage, several large segments of the work force will continue to be exempt from the minimum wage provisions of the Act. For example, at present only 3 percent of the Nation's farms are covered by the Fair Labor Standards Act. Under the Committee bill between 90 and 95 percent of all the Nation's farms will remain uncovered by the Act. The only farms covered will continue to be the

relatively large users of agricultural labor. The small family farm will continue to be exempt from coverage under the Act.

The majority of retail and service establishments will also remain exempt under the provisions of S. 2747. Estimates furnished the Committee indicate that at least 1 million retail and service establishments will continue to remain exempt from coverage, including all so-called "Mom and Pop" stores.

Committee Consideration of Legislation

The pending bill is the result of long and careful study. Lengthy hearings were held on similar legislation in 1971, 1972 and 1973.

Both in the 92d and the 93d Congresses the Senate gave extensive consideration to amending the Fair Labor Standards Act, including floor debates of four days in 1972 and three days in 1973. In 1972, the legislation was passed by a final vote of 65 to 27 on July 20, 1972, after seventeen amendments were considered. However, the House refused to go to Conference and consequently no bill was enacted. Then, in the first session of this Congress, after additional hearings and Committee consideration, the Senate once again passed the legislation by a vote of 64 to 33 on July 19, 1973. However, despite favorable action on the Conference Report by both Houses (the vote in the Senate agreeing to the Conference Report was 62 to 28), the President vetoed the legislation and the House failed to override that veto.

The Committee on Labor and Public Welfare, after two days of executive sessions, ordered S. 2747 reported favorably on February 6, 1974. The Committee was aided and the process of considering the bill greatly expedited by the extensive Congressional deliberations in the 92d Congress and the first session of this Congress.

Background

The most pressing question which confronted the first pioneers in America was how they were going to get enough to eat.

Today after more than 350 years, this question is once again foremost in the minds of many Americans. This present concern reflects both spiralling inflation and lagging wages.

With the shift from an agricultural to an industrial economy in the early 1800's, there was widespread acceptance of the idea that every American could find economic opportunities suitable to that person's talents and needs. Even during the periods of recession the belief was widespread that no one need want with such abundant opportunities as this country offered all of its citizens.

At the turn of the Twentieth Century, however, there was widespread evidence that a laissez-faire economy could not be depended upon to create a decent way of life for all. State and national governments initiated actions which reflected a growing belief that not every person, if left entirely to his or her own devices, would share in the national wealth according to his or her merits and industry.

So, laws were enacted by States and by the Federal Government which were designed to give direction to our economic life and which curbed the economic freedom of some elements in the community.

Laws were enacted requiring factory owners to install safeguards which would protect their workers from industrial accidents. Other laws regulated the hours, and sometimes the wages, of women and children in industry. The principle of worker's compensation was widely accepted and was implemented by legislation. Laws and regulations were developed to check the spread of occupational diseases. Sanitary standards were established for factories. Building codes were adopted as safeguards for persons living in tenements. Health regulations were established for the manufacture and handling of food products. Working hours in transportation were shortened. The rights of workers to organize and to bargain collectively with their employers were recognized. Insurance against unemployment and against want in old age was accepted as necessary for industrial workers.

In this climate of growing concern for those elements in the community which had to be assisted if they were to be treated fairly, the Fair Labor Standards Act represents one of our fundamental efforts to direct economic forces into socially desirable channels. It was designed to protect workers from poverty by fixing a floor below which wages could not fall, to discourage excessively long hours of work through requiring premium payments for overtime work, and to outlaw oppressive child labor in industry. It was intended to discourage competition among employers through substandard wages and excessively long hours. It was expected that it would add to buying power by broadening the base of people with money to spend and thus benefit business and the economy in general. The desirability of this effort was emphasized by President Roosevelt, in his Second Inaugural Address:

> I see one-third of a nation ill-housed, ill-clad, ill-nourished * * * The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.

and in his message to the Seventy-Fifth Congress, first session, requesting legislation to establish fair labor standards:

> All but the hopelessly reactionary will agree that to conserve our primary resources of manpower, Government must have some control over maximum hours, minimum wages, the evil of child labor, and the exploitation of unorganized labor.

The Fair Labor Standards Act of 1938 took effect on October 24, 1938. The Act is frequently referred to as a "depression measure" because many of its advocates stressed its importance as a tool, to prop up the economy after the depression. During periods of recession, the law is looked to as a support for wages; during periods of prosperity the law protects the low wage worker who is frozen into a pocket of low wages. At all times, it protects fair-minded employers against those who compete unfairly by paying substandard wages.

The original Act provided for a minimum wage of 25 cents an hour, to be increased to 30 cents at the end of a year, and to 40 cents by 1945. Industry committees were authorized to recommend rates above 30 cents prior to October 1945. All employees subject to the minimum wage were required to be paid at least 40 cents an hour by October 24, 1945.

Actually, by virtue of the action of the industry committees, a minimum wage of 40 cents was applicable to all workers covered by the Act in July 1944, more than a year before the date set by the Fair Labor Standards Act of 1938.

When the Fair Labor Standards Act of 1938 was originally passed, Puerto Rico and the Virgin Islands were given identical treatment with the mainland. Special industry committees were established for all industries on the mainland and the islands to "achieve as rapidly as economically feasible" the statutory minimum which was to go into effect not later than October 1945.

In 1940, Congress adopted an amendment to the act allowing for lower rates on the islands than on the mainland. Although the 1949 Amendments removed the industry committees for mainland industries, the procedure was, and has been maintained for the islands.

The FLSA Amendments of 1949 increased the minimum wage from 40 cents to 75 cents an hour. During World War II and the postwar period, many employees realized significant gains in purchasing power. However, just as today, the minimum wage worker's buying power eroded. An increase in the minimum wage from 40 cents to 75 cents an hour, an increase of 87½ percent, reflected the recognition by the Congress of the total inadequacy of the 40 cents rate.

During Congressional consideration of amendments to the FLSA, culminating in the 1949 amendments to the Fair Labor Standards Act, bills were introduced to extend the scope of coverage of the Act. At that time it was believed that it would not be feasible to simultaneously increase the minimum wage and expand coverage. Although there was considerable evidence that both were essential if the Act were to accomplish its basic purposes, the Congress opted for an increase in the level of the minimum wage and large numbers of low-wage workers remained outside the scope of the Act.

By 1955, the buying power of the minimum wage of 75 cents an hour had been severely reduced by the inflation which followed the outbreak of the Korean War. Bills were introduced to raise the level of the minimum wage and to expand the coverage of the Act. The Congress elected to raise the minimum wage to $1.00 an hour, a 33⅓-percent increase but once again deferred consideration of the question of coverage. In the 1961 amendments the Congress reflected the growing recognition that both an increase in the minimum wage and extension of coverage were essential if substandard living conditions were to be eliminated. The minimum wage was raised to $1.25 an hour and an additional 3½ million workers, principally in the retail and construction industries, were brought under the Act for the first time.

The effects of this dual approach to improving the Fair Labor Standards Act were closely studied by the Department of Labor. The studies clearly showed that the expansion of coverage under the Act was of critical importance in reducing poverty among the working poor. The 1961 amendments also showed that the economy could benefit from an increase in the minimum wage and an expansion of coverage.

In his report to the Congress evaluating the effects of the 1961 amendments, then Secretary of Labor Wirtz said:

> Two clear conclusions emerge from the studies so far made. First, the 1961 minimum wage increases had no dis-

> cernible effects on average wages in the economy generally. There is no indication that these increases produced any general upward pressure on the wage structure. Second, the 1961 minimum wage increases had no discernible effect on the nationwide level of employment in the industries affected. On an overall basis, employment has risen in these industries since the 1961 amendments took effect.
>
> * * * * *
>
> On balance, the data lead to the conclusion that the changes in the law which became effective on September 3, 1961 brought substantial benefits to low paid workers in many areas of the country, and that the increases in their incomes and purchasing power had beneficial effects in the communities in which they work.

Perhaps the most important aspect of the 1961 amendments was that they reflected the rejection by the Congress of the argument that substandard wages should be retained in some industries and occupations so as to provide a pool of low wage jobs.

With the 1966 amendments, the Fair Labor Standards Act came closer than at any time in its history to achieving its basic goal. Both in terms of breadth of coverage and the level of the minimum wage, Congress finally legislated standards which moved in the direction of substantially eliminating "labor conditions detrimental to the maintenance of a minimum standard of living necessary for health, efficiency and general well being of workers." The increase in the minimum wage to $1.60 an hour meant that a worker who worked year round could provide his or her family with something more than the poverty standard of living as determined by the Federal Government. The extension of coverage to approximately 12 million additional workers brought fair labor standards to some of the poorest workers in the economy.

By deleting or narrowing a number of exemptions under the Act and by revising the definition of "employer" and "enterprise engaged in commerce" the 1966 amendments extended the protection of the Act to additional employees in the private sector and, for the first time, to government employees in State and local hospitals and schools. The 1966 amendments incorporated other "firsts" in terms of coverage—laundries (other than industrial), hotels, restaurants and farms. This meant that workers in some of the lowest paid dead-end jobs were, after almost 30 years, guaranteed certain minimum labor standards. It also meant that for the first time in its history, the law protected almost two-thirds of black workers and almost three-quarters of women workers.

Title IX of the omnibus Education Amendments of 1972 approved by the President on June 23, 1972, and effective on July 1 of that year, contained a number of provisions establishing expanded prohibitions against sex discrimination, primarily in education, but in other segments of the economy as well.

One of the changes extended the minimum wage, overtime pay, and equal pay standards of the Fair Labor Standards Act to an estimated 150,000 nonsupervisory employees of preschool centers, public and private, profit and nonprofit.

One other provision made a very substantial change in the coverage of the equal pay standards of the Act by making the exemption for executive, administrative and professional personnel, outside salesmen, and school teachers inapplicable to the equal pay requirements of the Act.

The goal of the amendments embodied in the committee bill is to update the level of the minimum wage and to continue the task initiated in 1961—and further implemented in 1966 and 1972—to extend the basic protection of the Fair Labor Standards Act to additional workers and to reduce to the extent practicable at this time the remaining exemptions.

Need for the Bill

We have made substantial progress in eliminating poverty in America since President Roosevelt's 1937 Inaugural Address, but in 1972, 24.5 million Americans—12% of our population—were still living in poverty by official government standards.

The present minimum wage of $1.60 yields to a full-time working head of a family of four a gross weekly wage of $64 or $3,200 per year, $1,300 less than the poverty level and leaves the working-poor family eligible for welfare. Thus, the standards incorporated in the present law both in terms of scope of coverage and the level of the minimum wage now fall far short of insuring that every person in this country who works full-time, year-round will be able to provide his or her family with the basic necessities of life without reliance upon welfare.

The present minimum wage of $1.60 an hour ($1.30 for farm workers) was set by the Congress in 1966. At that time it was hearalded as a wage rate which would move the working poor above the poverty threshold. However, economic developments in the last several years have drastically curtailed the purchasing power of the minimum wage. Between 1966, when Congress amended the FLSA to increase the Federal minimum wage from $1.25 to $1.60 an hour and December 1973, the consumer price index rose 42.5%. Between February 1, 1968, the date the $1.60 rate actually became effective for most workers, and December 1973, the consumer index rose 35.4%. Thus a substantial increase in the minimum wage is necessary merely to restore the purchasing power of low wage workers to the levels established by Congress in 1966.

A minimum rate of $2.28 an hour is required merely to compensate for increases in the Consumer Price Index between 1966 and December 1973. In addition, average hourly earnings have increased by 45 percent since February 1968 and by 60 percent since 1966. Of great significance is the fact that the number of people living in poverty increased between 1969 and 1972. The increases in the number living in poverty between 1969 and 1970 and again between 1970 and 1971 were not offset by the decline in 1972. There were about 300,000 more persons living in poverty in 1972 than in 1969.

Increases in the cost of living are but one measure of the need for an increase in the minimum wage. Other barometers of economic activity also add further justification for a substantial increase in the minimum wage rate now.

Thus, American workers have traditionally shared, through increased wages and fringe benefits, in rising productivity. Between 1966 and 1973, productivity in the private nonfarm sector rose 17.4% and experts from the government and the business community have projected an average yearly increase of about 3% for the decade ahead. The Committee believes that low wage workers should share in the benefits of increased productivity, just as other workers do.

Moreover, the minimum wage rate enacted by Congress has traditionally reflected not only increases in the cost of living and increases in productivity, but has also reflected increases in the standard of living enjoyed by most Americans. In 1968 the ratio of the minimum wage rate to the average manufacturing rate was about 55%. Based on the December 1973 average manufacturing wage of $4.19 an hour, maintenance of that ratio would justify an immediate increase in the present minimum wage rate to $2.30.

Most importantly, as noted above, the poverty level income for an urban family of four is approximately $4,540 in 1973 dollars per year. In order to earn that income the head of a four-person household employed full-time would have to be paid at a rate of approximately $2.27 an hour.

The present bill is an attempt to insure that millions of low wage workers throughout the nation—workers whom this Act is specifically designed to protect—will regain at least some of the ground they have lost because of the inflation which we have experienced in recent years. Congress has previously recognized in the Economic Stabilization Act Amendments of 1971 that these low wage workers should not be subject to the wage controls which have been applicable to other workers. As stated in that legislation:

> (d) Nothwithstanding any other provisions of this title, this title shall be implemented in such a manner that wage increases to any individual whose earnings are substandard or who is a member of the working poor shall not be limited in any manner, until such time as his earnings are no longer substandard or he is no longer a member of the working poor. . . .
>
> * * * * * * *
>
> (f) The authority conferred by this section shall not be exercised to preclude the payment of any increase in wages—
>
> (1) required under the Fair Labor Standards Act of 1938, as amended, or effected as a result of enforcement action under such Act; . . .

Congress further defined substandard earnings in the 1973 amendment to the Economic Stabilization Act of 1970:

> The President shall prescribe regulations defining for the purposes of this subsection the term "substandard earnings," but in no case shall such term be defined to mean earnings less than those resulting from a wage or salary rate which yields $3.50 per hour or less. (Section 3 of the Amendments.)

The Committee considered not only the need for an increase in the minimum wage for workers now at the minimum but the needs of those workers who are currently exempted from the minimum rates.

The benefit to the economy, generally, from updating the FLSA was another point considered by the committee. Together, these factors pointed up the need for immediate increases in the minimum wage rates, and an expansion of coverage under FLSA.

This Committee does not believe that a successful anti-inflation program depends upon keeping the income of millions of American workers below officially established poverty levels.

The Committee also believes that establishment of minimum wage rate at a level which will at east help to assure the worker an income workers who do not currently enjoy such protection, and eliminating overtime exemptions where they have been shown to be unnecessary, the economy will be stimulated through the injection of additional consumer spending and the creation of a substantial number of additional jobs.

The Committee also believes that by raising the minimum wage rate at a level which will at least help to assure the worker an income at or above the poverty level is essential to the reduction of the welfare rolls and overall reform of the welfare system in the United States.

The following table shows the increases in the *seasonally adjusted annual rates* of change in the Consumer Price Index and in the food component of this index for each phase of the Economic Stabilization Program that began in 1971. It illustrates better than words why low wage workers need a minimum wage increase and why the Committee recommends $2.00 now and $2.20 one year from now.

	All items	Food
Prior to phase I (December 1970 to August 1971)	3.8	4.8
Phase I (August 1971 to November 1971)	2.0	1.7
Phase II (November 1971 to January 1973)	3.6	6.5
Phase III (January 1973 to June 1973)	8.3	20.3
The freeze and phase IV (June 1973 to December 1973)	9.6	18.6

These figures clearly show the burden which inflation imposes on the minimum wage worker—the worker who typically does not get a the minimum wage worker—the worker who typically does not get a raise unless the Congress mandates a raise through FLSA adjustments.

If additional support for a minmum wage increase appears necessary, one needs only to convert into an hourly wage rate the "lower" budget for a family of four. According to the Bureau of Labor Statistics, this budget cost $7,386 a year in the autumn of 1972. The intermediate budget was $11,446 and the higher budget $16,558.

By December 1973, the cost of the lower budget rose to $8,102 a year or about $4.05 an hour. In the light of these figures the recommended rates of $2.00 and $2.20 appear most conservative.

The Committee minimum wage proposal reflects a careful analysis of the history of previous amendments to the Fair Labor Standards Act, the economic effects of prior increases and expansions of coverage, and the latest economic indicators.

Each time Congress has considered minimum wage increases and expansions of coverage under the law, opponents to such action have raised the specter of economic doom. Congress was warned on each of those occasions that the legislation would cause spiralling inflation and increased unemployment. Yet, a close examination of the economic

data shatters this illusion of doom. The simple fact is that the prophecies have proven false. Every economic effects study by the Department of Labor, under both Democratic and Republican Administrations, demonstrates this fact. In the words of the 1972 report by Secretary Hodgson:

> On balance, the wage increases granted to 1.6 million workers to meet the $1.60 minimum wage standard had no discernible adverse effect on overall employment levels, and relatively little impact on overall wage or price trends.

Indirect or ripple effects

In the course of every hearing on amendments to the Fair Labor Standards Act, opponents of minimum wage legislation invariably raise the specter of across-the-board wage increases following on the heels of an increase in the minimum wage. The Committee believes that it is time that this specter be laid to rest. Superficially, the arguments of the opponents of FLSA may appear reasonable but closer study discloses several fallacies.

Experts who have studied the issue of wages know that most employers pay all of their employees well above the minimum wage. For these employers an increase in the minimum wage has no effect on labor costs. Actually, employers in this group benefit when the minimum is raised to a meaningful level because they recognize that unfair employers will no longer be able to realize a competitive advantage by paying substandard wages.

The second group of employers are those who pay a very small proportion of their employees the minimum wage but who pay most of their employees well in excess of the minimum. These employers raise the rates of those paid the minimum wage when the law changes. They do not raise the wages of most other workers because their wages are considerably above the minimum rate and there is no question of wage competition between the lowest wage, relatively unskilled worker and the average or semi-skilled worker or the high wage skilled worker. For these establishments, a raise in the minimum wage means a narrowing in the spread of wages between the lowest and highest wages with some movement in the wage interval just above the lowest but no immediate general upward movement.

The last group of establishments are those marginal employers who pay most of their employees at or close to the minimum wage. Studies have shown that these employers continue to pay workers the new minimum when the law is changed, and wage increases above those required by law are not granted.

Labor Department studies on effects of minimum wage increases have looked repeatedly into the matter of indirect or ripple effects and have documented the fact that when the minimum is raised the wage spread is narrowed and there is no general upward movement of wages.

Comments on this subject from Labor Department reports to the Congress under Sec 4(d) of the Act are listed below. The 1964 Report, which appraises the 1961 Amendments, stated with respect to indirect effect:

> . . . First, the 1961 minimum wage increases had no discernible effects on average wages in the economy generally.

There is no indication that these increases produced any general upward pressure on the wage structure.

The 1968 Report to the Congress stated with respect to hotels and motels:

> The application of the $1.00 minimum wage to employees in the nation's hotels and motels resulted in a substantial change in the wage pattern of covered employees paid below the minimum wage, but in very few changes in the wage structure above that level.

With respect to hired farmworkers, the 1968 Report stated:

> The immediate effect of the application of the $1.00 an hour Federal minimum to covered farms was pretty much confined to raising the wages of hired farmworkers who had been paid less than $1.00 an hour to that rate. There was little or no evidence of a bumping effect of the wage increases.

With respect to eating and drinking places, the 1968 Report stated:

> There is little evidence of indirect wage effects due to the application of a minimum wage to employees in covered eating and drinking places. Wage increases were confined, for the most part, to wages under 55 cents an hour for tipped employees and under $1.05 for non-tipped employees.

With respect to educational institutions, the 1970 Report stated:

> Changes in wage structure of educational institutions between the survey periods indicate that wage increases granted in response to the higher Federal minimum were limited almost entirely to nonsupervisory employees in the lowest wage brackets.

The Committee finds that the available statistical evidence simply does not support the thesis that increases in the minimum wage rate have significant indirect effect on workers earning rates above the minimum. Indirect effects are insignificant and when amended, the law accomplishes what it means to accomplish—to raise the wages of workers paid less than the minimum to the minimum.

Employment and Unemployment Effect

That there is no discernible increase in unemployment is equally established. A review of the employment-unemployment series published by the Bureau of Labor Statistics of the Department of Labor shows that nonagricultural employment increased after each change in the law and that unemployment actually decreased after all but one of the changes and in that case it remained unchanged.

The data on employment and unemployment trends are presented below in the hope that consideration of proposed amendments to the Act will no longer be clouded by unsupported allegations that employment always declines and that unemployment rises after the minimum wage rate is increased.

First, on the employment side:

> *On January 25, 1950*, the minimum wage was increased from $.40 to $.75 an hour and nonagricultural employment rose from 43,778,000 in 1949 to 45,222,000 in 1950.

On March 1, 1956, the minimum wage was increased from $.75 to $1.00 an hour and nonagricultural employment rose from 52,408,000 in 1956 to 52,894,000 in 1957.

On September 3, 1961, the minimum wage was increased from $1.00 to $1.15 an hour and nonagricultral employment rose from 54,042,000 in 1961 to 55,596,000 in 1962.

On September 3, 1963, the minimum wage increased from $1.15 to $1.25 an hour and nonagricultral employment rose from 56,702,000 in 1963 to 58,331,000 in 1964.

On February 1, 1967, the minimum wage increased from $1.25 to $1.40 an hour and nonagricultural employment rose from 65,857,000 in 1967 to 67,915,000 in 1968.

On February 1, 1968, the minimum wage increased from $1.40 to $1.60 an hour and nonagricultural employment rose from 67,915,000 in 1968 to 70,284,000 in 1969.

On the unemployment side minimum wage increases have never resulted in increased unemployment. On the contrary, subsequent to the 1949, 1961, and 1967–1968 minimum wage increases, unemployment actually decreased, and in the case of the 1956 minimum wage increase, unemployment remained stable.

The Committee recognized that a higher minimum wage may mean increased employer costs, but it also means increased purchasing power in the hands of the poor and a greater demand for goods and services. For the worker, it means less hardship and greater dignity. For the Government, it means lower welfare costs. Under the requirements of the Social Security Act with respect to Aid to Families with Dependent Children, for a family of four headed by a woman working fulltime a $.60 increase in the minimum wage would result in about a $.40 reduction in assistance or a reduction of $69 per month or $832 a year. There would be some variation among the states but in 33 states the full $69 per month reduction will be realized. In another 15 states reductions of less than $69 per month would be realized.

Impact on inflation

The economic effects studies previously cited in this section also completely discredit the thesis that minimum wage increases have any discernible effect on inflation. Previous (1949–1956) increases in the minimum wage rate of greater percentage than provided in the present bill have been absorbed easily by the economy, and there is no reason to assume that a different result would obtain under this bill. Indeed, an economist for the Chamber of Commerce, testifying before this Committee in 1971, almost three years ago, took the position that the increases in this bill, even in 1971, would not be inflationary. In fact, the direct payroll costs of the Committee bill will be only 0.4 percent of the total national wage bill in the first year, 0.3 percent in the second year, 0.2 percent in the third year and less than 0.05 percent in the fourth year.

As previously noted, Congress in enacting Economic Stabilization legislation, has consistently exempted low-income workers from any wage controls.

In short, this bill is not inflationary.

Economic climate

The Committee leaves to the economists the art of predicting the future. Instead the Committee looks back on what has actually been

happening and is disturbed that, despite the rapid growth of the economy, the unemployment rate has stubbornly remained at or near 5 percent. Even the latest 5.2 percent figure is an understatement in that this rate does not include those workers who are compelled to work part-time because full-time jobs are not available. Nor does it measure "discouraged workers"— those who want and need jobs but no longer seek them because the situation is hopeless."

After-tax corporate profits in 1973 were up 26 percent over 1972 and 1972 was up 16 percent over 1971 and 1971 was up 21 percent over 1970.

A comparison of the magnitude of these increases with the controlled increases in average hourly earnings of nonsupervisory workers in private nonfarm employment indicates the inequities which continue to characterize our economic policies. Between 1972 and 1973, gross average hourly earnings increased 6.6 percent on top of increases of 6.4 percent between 1972 and 1971 and 6.5 percent between 1970 and 1971.

The Present Act

An estimated 49 million nonsupervisory workers are presently subject to the minimum-wage provisions of the FLSA. This figure represents three-quarters of the employed nonsupervisory labor force.

However, significant coverage gaps still exist. In the private sector for example, an estimated 11.7 million nonsupervisory employees are not protected by the Federal minimum-wage standard. Of these, almost 6½ million are employed in retail trade and service establishments, 2 million are in domestic service, and about three-quarters of a million are farm workers. The remainder are outside salesmen or are engaged in certain miscellaneous activities.

In the public sector, about 60 percent of the nonsupervisory employees of Federal, State, and local governments are not subject to the Federal minimum wage.

S. 2747 provides minimum wage protection for 6.9 million of these currently exempt workers.

The gaps with respect to overtime coverage are even greater than those with respect to minimum-wage coverage. Approximately 42.6 million nonsupervisory employees are subject to the overtime compensation provisions of the Act. While three-fourths of all nonsupervisory workers are required to be paid at least the minimum wage, only two-thirds are required to be paid time-and-one-half their regular rates of pay for all hours over 40 in a week. In part, the more limited overtime coverage reflects the fact that many of the workers who were covered for the first time by the 1966 amendments to the Act were guaranteed the minimum wage but were denied overtime protection.

S. 2747 provides overtime protection for 8.6 million of these workers.

Reports from the Labor Department make clear that State laws do little to fill the gaps in the FLSA in the case of the minimum wage and even less where overtime is concerned.

Major Provisions of the Bill

MINIMUM WAGE

The bill provides for a statutory minimum wage of $2.20 an hour for all covered workers but establishes different time schedules for

achieving this standard for various categories of employment. Fundamental to the Committee's deliberations was the notion of parity--that all workers should be treated alike for purposes of minimum wage. However, mindful of the historical development of the Fair Labor Standards Act and in line with the need to mitigate the initial impact of expanded coverage, the Committee provided for staged increases in the minimum wage depending upon when specific workers were first brought under the Act. All mainland nonfarm workers covered prior to 1966 will attain a $2.20 minimum wage one year from the effective date. An additional step is provided for nonfarm workers newly covered under the 1966 and 1974 amendments. They will reach parity with other workers at the $2.20 rate two years from the effective date. Farmworkers will achieve parity at the $2.20 rate three years after the effective date. In addition, special provision is made for achieving minimum wage parity for workers in Puerto Rico and the Virgin Islands.

A. On the effective date (the first day of the first full month after enactment), the bill requires that (a) employees in activities covered prior to the 1966 amendments (and Federal government employees covered by the 1966 amendments, other than employees of the Canal Zone), will be paid at least $2.00 an hour, (b) nonfarm employees in activities covered by the 1966 and the 1974 amendments will be paid $1.80 an hour (including Federal Government employees in the Canal Zone), and (c) farmworkers will be paid at least $1.60 an hour.

The implementation of the first stage of the proposed 1974 amendments will mean that 3.4 million workers, or about 6 percent of the 56 million covered workers (including workers covered for the first time by the 1974 amendments) are to receive wage increases on the effective date, although the annual wage bill will be increased by only 0.4 of one percent in order to comply with the statute.

B. One year from the effective date, the bill requires that (a) employees in pre-1966 coverage activities and employees of the Federal Government (other than Canal Zone employees) will be paid at least $2.20 an hour, (b) employees covered by the 1966 and 1974 amendments (except farmworkers) will be paid at least $2.00 an hour, and (c) farmworkers will be paid at least $1.80 an hour.

The second stage of the proposed 1974 amendments will mean wage increases for about 5 million workers and will require an increase in the annual wage bill of only 0.3 of one percent one year after the effective date.

C. Two years from the effective date, the bill requires that the statutory minimum wage of $2.20 an hour be paid to all employees (except farm workers) covered by the Act including employees in 1966 and 1974 coverage activities. Farmworkers are required to be paid at least $2.00 an hour.

This stage of the proposed 1974 amendments will require wage increases for 3.2 million workers and an increase in the annual wage bill of 0.2 of one percent.

D. Three years from the effective date the bill requires that a minimum wage of $2.20 an hour be paid to farmworkers.

This stage will require increases for approximately 184,000 workers and an annual wage bill increase of less than 0.05 percent.

The increase for most covered workers to $2 an hour immediately is necessary if we are to reverse the recent upward trend in the number of persons living in poverty. A further increase to $2.20 is

essential if we are to guard against increasing the number of working poor next year. The Bureau of the Census reports that the number of poor persons increased between 1969 and 1970 and again in 1971. These increases are the first since poverty data were tabulated in 1959. While the number decreased in 1972, the figure for 1972 was still above the 1969 level.

The Bureau of the Census also reports that a non-farm family of four requires an income of $4,275 per year in 1972 dollars, about $4,500 in 1973 dollars, to begin to lift itself above the government-defined poverty line. Yet several million families—including those headed by full-time year-round workers—have lower annual incomes.

If the conditions that poverty breeds in this country are to be changed poverty wages must be eliminated. These conditions will not change unless the FLSA minimum wage is increased, because minimum wage workers rarely have the bargaining position or the skills necessary to increase their wages as the cost of living increases. In essence, Congress must act in the interest of the Nation's working poor.

Of great importance, the Committee was well aware throughout its deliberations that workers who toil at the minimum wage level are poor people by the standards of our society. They are working full-time, but they are poor. In the 1969 report on the minimum wage, Secretary of Labor Wirtz stated that: "Poverty" is erroneously identified in loose thinking with "unemployment." * * * "Whatever basis there is in any of these criticisms or proposals (of anti-poverty efforts) commends strongly a first step of seeing to it that when a person *does* work he gets enough for it to support himself and his family." A gross weekly income of $64, which is all that the current minimum wage provides to a full time worker, hardly meets that criterion.

EXTENSION OF COVERAGE

The Committee recognizes and the bill reflects an awareness that to raise the minimum wage without expanding the coverage of the Act would serve to deny even the minimum benefits of the Act to large groups of workers who have been denied the protection of the Act for more than 30 years.

Just as in 1961 and 1966, witnesses before this Committee described the plight of workers who are excluded from the Act. And, as in 1961 and 1966, the Committee agreed that a further expansion of coverage was essential if the basic objective of the Act—the elimination of "labor conditions detrimental to the maintenance of a minimum standard of living necessary for health, efficiency and general well-being of workers" was to be achieved.

The Committee was particularly impressed by the ease with which the economy adjusted to the 1966 amendments to the Fair Labor Standards Act which provided for a substantial increase in coverage—approximately 12 million workers—as well as an increase in the minimum wage from $1.25 to $1.60.

The importance of the minimum wage to low wage workers was described by then Secretary of Labor Shultz in his January 30, 1970, report to the Congress on matters pertaining to fair labor standards. He stated:

> One of the major goals of this Administration is to get people off the welfare rolls and on to payrolls. Once having

> achieved that, unless the worker receives the minimum wage he is more likely to fall back on the welfare rolls. Accordingly, the vital and meaningful role of the Wage and Hour Division continues to be the vigorous and effective enforcement of the FLSA to insure that employees receive at their work places those rights which the Congress intended for them.

In 1971 and 1972 then Secretary of Labor Hodgson submitted reports to the Congress in which emphasis was placed on the importance of the minimum wage increases and the absence of adverse effects. The report for 1971 stated:

> In view of overall economic trends, it is doubtful whether changes in the minimum had any substantial impact on wage, price, or employment trends. Of much greater significance, however, is the fact that the 15-cent boost did help two million workers recover some of the purchasing power eroded by the steady upward movement of prices which had started even before the enactment of the 1966 amendments.

The 1972 Report draws the following conclusions about the effects of the final phase of the 1966 amendments:

> On balance, the wage increases granted to 1.6 million workers to meet the $1.60 minimum wage standard had no discernible adverse effect on overall employment trends, and relatively little impact on overall wage or price trends.

The Committee reviewed present coverage, as well as the gaps therein, and determined that a strong need exists for covering domestics, additional workers in retail and service industries and in government. The Committee also determined that local seasonal hand harvest laborers should be included for purposes of the 500 man-day test, which covers large farms. The retention of the 500 man-day test provides that workers on small farms will not be covered. The Committee carefully examined the economic implications of extending coverage and was persuaded that wages should go up for workers on the lowest rung of the wage ladder and that the economy could easily absorb these raises. The Committee bill would expand coverage as follows:

NUMBER OF NONSUPERVISORY EMPLOYEES

[In thousands]

Industry	Expanded coverage	Present coverage	New coverage under S. 2747
All industries	56,304	49,427	6,877
Private sector	47,696	45,898	1,798
Retail trade	7,736	7,149	587
Services (except domestic)	7,213	7,087	126
Domestic service	1,018		1,018
All other	31,729	31,662	67
Public sector	8,608	3,529	5,079
Federal Government	2,308	615	1,693
State and local government	6,300	2,914	3,386

Note: Estimates reflect employment in September 1973, except for agriculture (May 1973) and for education (October 1973). Data exclude 2,147,000 outside salesmen.

In addition to expanding coverage, the bill amends section 3(s) by changing the word "including" to "or," to reflect more clearly that the "including" clause was intended as an additional basis of coverage. This is, in fact, the interpretation given to the clause by the courts. See, *e.g.*, *Wirtz* v. *Melos Construction Co.*, 408 F.2d 626, 627 (C.A. 2); *Brennan* v. *Greene's Propane Gas Service* 478 F.2d 1027 (C.A. 5) *Brennan* v. *Hatton*, 474 F.2d 9 (C.A. 5), *Shultz* v. *Dean-Hill Country Club, Inc.*, 433 F.2d 1311 (C.A. 6), aff. *per curiam* 310 F. Supp. 272 (E.D. Tenn.) ; *Shultz* v. *Kip's Big Boy, Inc.*, 431 F.2d 530 (C.A. 5); *Clifton D. Mayhew, Inc.* v. *Wirtz*, 413 F.2d 626 (C.A. 4); *Hodgson* v. *Jackson*, 351 F. Supp. 291 (W.D. Va.). The bill also adds the words "or materials" after the word "goods" to make clear the Congressional intent to include within this additional basis of coverage the handling of goods consumed in the employer's business, as, *e.g.*, the soap used by a laundry. The "handling" language was added based on a retrospective view of the effect of substandard wage conditions.

While the original Act recognized the effect of such conditions on subsequent interstate *out*flow of products, it was not until the 1961 amendments that Congress specifically recognized their effect on the prior interstate *in*flow, based on the "obvious economic fact that demand for a product causes its interstate movement quite as surely as does production" (107 Cong. Rec. 6236). See H. Rept. No. 75, 87th Cong., 1st Sess. (1961), pp. 3, 8; S. Rept. No. 145, 1st Sess, pp. 3–4; 107 Cong. Rec. 5841, 6234, 6236, 6240–6241. Although a few district courts have erroneously construed the "handling" clause as being inapplicable to employees who handle goods used in their employer's own commercial operations (see, *e.g.*, *Shultz* v. *Travis-Edwards, Inc.*, 320 F.Supp. 384 (D. La.), revs'd on other grounds 465 F.2d 1050, cert. den. 93 S.Ct. 685; *Shultz* v. *Wilson Building, Inc.*, 320 F.Supp. 664 (S.D. Tex.), aff'd on other grounds 478 F.2d 1090 (C.A. 5), cert. den. 94 S.Ct. 156; the only court of appeals to decide this question, *Brennan* v. *Dillion*, 483 F.2d 1334 (C.A. 10), and the majority of the district courts have held otherwise (see *e.g. Hodgson* v. *Rivermont Corp. d/b/a Fox Meadows Apartments*, 71 CCH Lab. Cas. ¶32,898 (M.D. Fla.); *Hodgson* v. *David M. Woolin & Son*, 20 WH Cases 91, 64 CCH Lab. Cas. ¶32,527 (S.D. Fla.); *Sharp* v. *Warner Holding Co.*, 70 CCH Lab. Cas. ¶32,821 (D.C. Minn. 1972); *Mansdorf* v. *Ernest Tew Associates*, 69 CCH Lab. Cas. ¶32,775 (M.D. Fla. 1972); *Hodgson* v. *Howard d/b/a Howard Cleaners*, 69 CCH Lab. Cas. ¶32,777 (N.D. Ala. 1972); *Wirtz* v. *Washeterias S.A.*, 304 F.Supp. 624, 59 CCH Lab. Cas. ¶32,116 (D. Canal Zone 1968); *Hodgson* v. *Keller d/b/a Plaza Laundromat & Dry Cleaning*, 20 WH Cases 1073, 70 CCH Lab. Cas. ¶32,848 (D. Ohio 1973); *Shultz* v. *Union Trust Bank of St. Petersburg*, 397 F. Supp. 1274 (M.D. Fla. 1969) and the addition of the words "and materials" will clarify this point.

Retail trade and services (except domestics)

The Committee bill would extend the Fair Labor Standards Act to employees of individual retail and service establishments (except "Mom and Pop" stores) which are part of enterprises with gross annual receipts of more than $250,000. Under current law, individual establishments which have annual receipts less than $250,000 are exempt even if they are part of a chain which has annual receipts over $250,000.

Currently, the Act protects about 14.2 million nonsupervisory workers in retail trades and services. The Committee bill would increase coverage in these activities by 713,000 workers, exclusive of domestics.

The bill phases out by July 1, 1976 the $250,000 establishment test for smaller stores of large covered chains. Currently, two stores of the same chain are treated differently under the Act. For example, if a multi-million dollar chain has 10 stores, 9 of which have annual sales in excess of $250,000 and one has receipts of less than $250,000, the Act currently applies to employees of the 9 stores, but not to the employees of the smaller store of the same chain. Employees in the 9 stores are currently guaranteed the protection of the FLSA, but the employees of the 10th store have no such protection. This inequity would be rectified if all establishments of a covered chain were treated equally under the law.

The bill would not directly affect franchised or independently owned small (less than $250,000 annual receipts) retail and service firms nor would it extend coverage to the so-called "Mom & Pop" stores.

This bill would not only protect many of the retail and service employees who were not benefited by the 1961 and 1966 amendments to the Fair Labor Standards Act, but it would also protect medium size shopkeepers, who are covered by the law, from being undercut by retail or service establishments which may be part of multimillion dollar enterprises, yet are exempt from the Act and pay subminimum wages.

Once again the Committee looked to special reports of the Department of Labor which were designed to determine how employers adjusted to the extensions of coverage to retail and service activities in 1961 and 1966. Repeatedly these reports stated that employment increased in activities newly covered by the FLSA. For example, the Labor Department's nation-wide survey of restaurant employees shows that employment increased by 3,900 workers between October 1966 and April 1967, the period spanning the effective date of the initial phase of the 1966 amendments to the minimum wage law. The Labor Department reported that the "largest employment increase occurred in the South where the wage impact was greatest." It is apparent from the various reports that the retail and service industry has adjusted to FLSA coverage with relative ease.

Domestic service employees in private households.

The bill would bring under the minimum wage and overtime provisions of the Act all employees in private household domestic service earning "wages" ($50 per quarter) for purpose of the Social Security Act, but retains a minimum wage and overtime exemption for casual babysitters and companions and an overtime exemption for live-in domestic service employees.

The reasons for extending the minimum wage protection of the Act to domestics are so compelling and generally recognized as to make it hardly necessary to cite them. The status of household work is far down in the scale of acceptable employment. It is not only low-wage work, but it is highly irregular, has few if any non-wage benefits, and is largely unprotected by unions or by any Federal or State labor standards.

In its 1974 Report to the Congress on Minimum Wage and Maximum Hours Standards under the Fair Labor Standards Act, the Department of Labor summarized the findings in a nationwide survey of wages, weekly hours of work and fringe benefits (including perquisites) for private household workers. The data relate to May 1971.

According to this Report, 2.4 million persons were employed as private household workers in May 1971. Of these, about 600,000 were babysitters with no housekeeping duties. Hourly earnings of the 1.8 million household workers (exclusive of babysitters) averaged $1.34 an hour. Thiry-one percent of the group were paid less than $1.00 an hour and fifty-seven percent less than $1.50 an hour.

The survey also discloses the extent to which domestics have short workweeks. More than half of all domestics were reported as working less than 15 hours a week and only a fifth worked a full workweek—35 hours and over.

In developing estimates of the increases in labor costs which would be required to raise the wages of domestics earning less than the proposed minimum wage to the minimum wage, it is important to make allowance for the value of certain perquisites which such workers receive. The Fair Labor Standards Act makes provision for crediting of non-cash wages toward complying with the minimum wage standard set by the statute. This means that the value of such items as free meals, lodging, and transportation would have to be considered before reliable impact figures could be developed.

It is also important to note that even in a period of high unemployment such as exists today, the demand for household workers is not being met. Bringing domestic workers under the Fair Labor Standards Act would not only assure them a minimum wage but would enhance their status in the community. It is expected that the supply of domestic workers will increase as their pay and working conditions improve. Minimum wages should serve to attract skilled workers to these jobs at a time when the need for skilled domestic employees is greatly increasing.

The impact of including domestic workers under the coverage of the Act is extremely difficult to calculate. In its 1973 "4(d) Report" the Department of Labor discussed a study done by Mattila, in which he predicts a significant disemployment effect as a result of such coverage. However, Mattila suggests that hours per day, and days per week of work for maids would likely be reduced rather than maids being fired as a result of minimum wage coverage. At the time, the Labor Department qualified the predictions by pointing out that the effect of minimum wage coverage will "be eroded over time by inflation," increases in real income, and increased female participation in the labor force.

Six months later, when questioned as to how many household worker jobs would be eliminated in rural areas, and as to what the effect on the black female adult unemployment rate would be as a result of coverage for domestics, the Department stated that it has "no available *reliable* information." [Emphasis added.]

The Committee took notice of the fact that careers for women have become increasingly common and that this occurrence is bound to lead to an increased demand for domestic help in the homes of employed wives and mothers. If an effective and dignified domestic work force

is to be developed, a living wage and respectable working conditions are vital. Now that Congress has sent to the States the constitutional amendment guaranteeing equal rights to women, it would be hypocritical in the extreme to deny an appreciable segment of the female work force, earning low wages, an opportunity to share in the rewards of more meaningful employment under the protection of the Fair Labor Standards Act.

The Committee is persuaded that objections to covering domestics on the ground of administrative complexity and difficulty of enforcement are unacceptable reasons for denying the benefits of the Act to those most in need of such benefits. This Committee is convinced that legislation which clearly expresses the intent of the Congress with respect to fair labor standards for domestics will be followed by voluntary compliance on the part of most housewives.

The term "domestic service" employees is not defined in the Act. The Committee, however, has referred to the regulations issued under the Social Security Act, and the generally accepted meaning of domestic service relates to services of a household nature performed by an employee in or about a private home of the person by whom he or she is employed. The domestic service must be performed in a private home which is a fixed place of abode of an individual or family. A separate and distinct dwelling maintained by an individual or family in an apartment house or hotel may constitute a private home. However, a dwelling house used primarily as a boarding or lodging house for the purpose of supplying such services to the public, as a business enterprise, is not a private home.

Generally, domestic service in and about a private home includes services performed by persons employed as cooks, butlers, valets, maids, housekeepers, governesses, janitors, laundresses, caretakers, handymen, gardeners, footmen, grooms, and chauffers of automobiles for family use. The regulations issued under the Social Security Act also include babysitters. See § 31.3121(a)(7)–1(a)(2). It is not, however, the Committee's intent to include within the term "domestic service" such activities as casual babysitting and acting as a companion. On the other hand, the fact that a person employed as a cook, maid, housekeeper, etc. may also have duties relating to the care of children does not remove that person from the category of a domestic service employee.

It is the intent of the Committee to include within the coverage of the Act all employees whose vocation is domestic service. However, the exemption reflects the intent of the Committee to exclude from coverage babysitters for whom domestic service is a casual form of employment and companions for individuals who are unable because of age and infirmity to care for themselves. But it is not intended that trained personnel such as nurses, whether registered or practical, shall be excluded. People who will be employed in the excluded categories are not regular bread-winners or responsible for their families' support. The fact that persons performing casual services as babysitters or services as companions do some incidental household work does not keep them from being casual babysitters or companions for purposes of this exclusion.

In cases in which the domestic service employee resides on the employer's premises, the specific provision of the Secretary's interpretative bulletin relating to hours worked by such an employee would

be applicable (see 29 CFR 785.23). Ordinarily such an employee engages in normal private pursuits such as eating, sleeping, and entertaining, and has other periods of complete freedom. In such a case it would be difficult to determine the exact hours worked. Accordingly, any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted as a proper basis for determining hours worked. This rule has been applied by the courts in analogous cases, See, e.g., *Skelly Oil Co.* v. *Jackson*, 194 Okla. 183, 148 P.2d 182 (Okla. Sup. Ct. 1944).

The Committee is confident that appropriate methods to ensure compliance can be fashioned within the authority of the Secretary of Labor under the FLSA. The Committee calls attention, for example, to the provisions of the law and the Secretary of Labor's regulations which credit the employer with the reasonable value of board and lodging furnished to an employee. These provisions, coupled with the provision for an overtime exemption for live-in domestics, as provided in the bill, will serve to minimize any problems which might arise in the application of the law.

The Committee concurs with the philosophy expressed by Elizabeth Duncan Koontz, former Director of the Women's Bureau of the Department of Labor when she said in a speech in Anaheim, California on Nov. 9, 1970 that household employment "needs a decent wage level, good working conditions, and fringe benefits." She emphasized that "First in importance is coverage under minimum wage laws."

The additional question of the constitutionality of coverage of domestics was raised. The Committee found that domestics and the equipment that they use in their work are in interstate commerce. For example, vacuum cleaners are produced in only six States, and laundry equipment is produced in only seven States, creating a tremendous flow in commerce of these items used daily by domestics. Also, it is common knowledge that every domestic handles such items as soap, wax, and other household cleaners which have moved in interstate commerce (cf. *Wirtz* v. *Washeterias S. A.*, 304 F. Supp. 624 (D. Canal Zone, 1968); *Shultz* v. *Union Bank of St. Petersburg*, 297 F. Supp. 1274 (M. D. Fla. 1969)). In addition, employment of domestics in households frees time for the members of the household to themselves engage in activities in interstate commerce.

The Supreme Court in *Wickard* v. *Filburn*, 317 U.S. 11 (1942), held that wheat grown wholly for home consumption was constitutionally within the scope of federal regulations of wheat production because, though never marketed interstate, it supplied the need of the growers which otherwise would be satisfied by his purchases in the open market.

In short, the committee is persuaded that coverage of domestic employees is a vital step in the direction of ensuring that all workers affecting interstate commerce are protected by the Fair Labor Standards Act.

There can be little doubt that the low wages now paid to domestics as a group have a substantial effect on the economy and the fiscal and tax policies of both the Federal Government and the State. According to estimates of the Department of Labor, the minimum wage rates proposed for domestics in the Committee bill will place in the hands of these low-income employees an additional $572 million during the first

year after the effective date, $572 million plus an additional $140 million during the second year, and $572 plus $140 plus an additional $145 million during the third year and thereafter.

That will represent a substantial increase in purchasing power which is bound to have salutary effects on the national economy, as well as the economy of our central cities, where many domestic employees live. Furthermore, this additional income will serve to lessen welfare payments to this category of employees, and should also serve to upgrade the status and dignity of this type of work.

Over and above the direct impact on interstate commerce which results from the low wages received by this large group of employees, there can be little doubt that the deplorably low wages received by domestics contribute substantially to the vicious poverty cycle, which has created such chaos in our central cities.

Of particular concern is the fact that non-white persons living in poverty increased by almost a half million between 1971 and 1972, according to a report of the Department of Commerce. This increase occurred at the same time that the number of white persons living in poverty declined.

Our inability to end poverty in America has already had a pervasive impact on the population characteristics of our cities. This in turn has resulted in profound changes in commercial, economic, social and educational patterns throughout the country. These changes, and the problems they have created, are not localized. Their solution demands Federal, not merely local action, as Congress has already recognized in enacting a myriad of programs dealing with such matters as housing welfare, education, transportation, manpower training and public service employment.

Since domestic employment is one of the prime sources of jobs for poor and unskilled workers, it is clear that there is an important national interest at stake in insuring that the wages received for such work do not fall below a minimal standard of decency.

In this vein, the Committee took note of the expanded use of the interstate commerce clause by the Supreme Court in numerous recent cases (particularly *Katzenbach* v. *McClung*, 379 U.S. 294 (1964)) to accord Federal protection to persons needing such protection.

Last year, the Senate rejected an amendment to strike coverage of domestic employees, recognizing that domestic workers in households are in need of this Federal protection. Connections with the flow of commerce are both tangible and direct, providing a rational basis for finding the requisite link to interstate commerce.

FEDERAL, STATE, AND LOCAL GOVERNMENT EMPLOYMENT

S. 2747 extends FLSA coverage to five million non-supervisory employees in the public sector not now covered by the Act. Some 3.5 million non-supervisory government employees, primarily employees in state and local hospitals, schools, and other institutions, are already covered. With enactment of the amendments contained in S. 2747, virtually all non-supervisory government employees will be covered. The Committee intends that the FLSA be applicable to non-supervisory government employees at all levels of government.

The Committee bill sets a minimum wage for presently covered Federal employees (except in the Canal Zone) at $2.00 an hour on the effective date, and provides for an increase in the minimum to $2.20 at the end of one year. For Federal employees newly covered by the proposed 1974 amendments, for Canal Zone employees, and for employees of State and local governments, whether currently covered or newly covered, the bill applies a $1.80 rate on the effective date and provides for increases to $2.00 at the end of one year, and $2.20 at the end of the second year.

FEDERAL

Coverage of Federal employees is extended by the bill to most employees including wage board employees, non-appropriated fund employees, employees in the Canal Zone who are engaged in employment of the kind described in sections 5102(c)(7) of title 5, U.S.C. and any other civilian employees working for the armed services. Excluded from coverage are military personnel. Basically, the Committee did not intend to extend FLSA coverage to those persons for whom the tangible benefits of government employment are of secondary significance, for example Peace Corps and VISTA volunteers. By the same token, the Committee intends to cover all employees (except professional, executive, and administrative personnel who are exempted under section 13 of the law) in all civilian branches of the Federal Government.

The Secretary of Labor in 1973, reflected the Civil Service Commission's view when he recommended against bringing Federal employees under the coverage of the Fair Labor Standards Act. The Commission's position was that Federal employees are already covered by special pay provisions in title 5, United States Code, and that enactment of this legislation would confuse the administration of these provisions and could raise jurisdictional problems of administration.

The Committee resolved this matter by including Federal employees within the coverage of the Act and charging the Civil Service Commission with responsibility for administration of the Act so far as Federal employees (other than employees of the Postal Service, the Postal Rate Commission or the Library of Congress) are concerned. It is the intent of the Committee that the Commission will administer the provisions of the law in such a manner as to assure consistency with the meaning, scope, and application established by the rulings, regulations, interpretations, and opinions of the Secretary of Labor which are applicable in other sectors of the economy. The provisions of the bill would leave the premium pay provisions of title 5, United States Code, in effect to the extent that they are not inconsistent with the Fair Labor Sandards Act.

In addition, Federal employees serving as policemen, firemen, and employees in correctional institutions are provided a special overtime provision if under an agreement entered into between the employer and the employee a work period of 28 consecutive days is accepted in lieu of a workweek of 7 consecutive days and if overtime compensation is to be paid for employment in excess of 192 hours in such work period during the first year, 184 hours in such period during the second year, 176 hours in such period during the third year, 168 hours in

such period during the fourth year, and 160 hours in such period thereafter.

The Committee intends that the provisions of section 5341 of title 5, United States Code, requiring the section 6(a)(1) rate for prevailing rate system employees, will continue to apply.

STATE AND LOCAL

There are a number of reasons to cover employees of State and local governments. The Committee intends that government apply to itself the same standards it applies to private employers. This principle was manifested in 1972 when the Senate overwhelmingly voted to apply Federal equal employment opportunity standards to public sector employers. Equity demands that a worker should not be asked to work for subminimum wages in order to subsidize his employer, whether that employer is engaged in private business or in government business. The Senate has also applied wage ceilings to the wages paid public employees. The Committee sees no reason, therefore, why these employees should not be protected by the wage floor provided by the FLSA.

The Committee believes that there is no doubt that the activities of public sector employers affect interstate commerce and therefore that the Congress may regulate them pursuant to its power to regulate interstate commerce. Without question, the activities of government at all levels affect commerce. Governments purchase goods and services on the open market, they collect taxes and spend money for a variety of purposes. In addition, the salaries they pay their employees have an impact both on local economies and on the economy of the nation as a whole. The Committee finds that the volume of wages paid to government empoyees and the activities and magnitude of all levels of government have an effect on commerce as well.

The Committee anticipates that the financial impact on local government units will be minimal.

The Department of Labor has supplied the Committee with figures on impact of minimum wage coverage on state and local governments. They indicate that the cost of increasing state and local employees covered in 1966 and those covered in this bill to $1.80 per hour will be .3% of the annual wage bill or $128,000,000. The following year, there will be a .5% increase in the annual wage bill or $162,000,000.

The Committee has also made an effort to minimize any adverse effects of overtime requirements by providing for a phase-in of those public employees who are most frequently required to work more than forty hours per week, the public safety and fire fighting employees.

The bill includes a special overtime standard for law enforcement and fire protection employees including security personnel in correctional institutions. For such workers, if there is an agreement or understanding with their employers the bill provides for a standard work period of 28 days instead of the basic standard of a 7-day week for purposes of determining overtime compensation. Time and one-half the regular rate of pay is required for all hours over 192 in the 28-day period during the first year; over 184, during the second year; over 176, during the third year; over 168, during the fourth year; and over 160 hours at the beginning of the fifth year and thereafter.

The question of treatment of employees who work 24 hour shifts was raised in the Committee. The matter of hours worked for such employees has been treated by the Secretary of Labor for many years with respect to 24 hour shift operations of nonpublic workers such as telephone and power company employees and watchmen. These regulations state the following:

INTERPRETATIVE BULLETIN ON HOURS WORKED

Sleeping Time and Certain Other Activities

Section 785.22 DUTY OF 24 HOURS OR MORE.

(a) GENERAL.—Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If sleeping period is of more than 8 hours, only 8 hours will be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked. (*Armour* v. *Wantock*, 323 U.S. 126 (1944); *Skidmore* v. *Swift*, 323 U.S. 134 (1944); *General Electric Co.* v. *Porter*, 208 F. 2d. 805 (C.A. 9, 1953), cert. denied, 347 U.S. 951, 975 (1954); *Bowers* v. *Remington Rand*, 64 F. Supp. 620 (S.D. Ill. 1946), aff'd 159 F. 2d 114 (C.A. 7, 1946), cert. denied 330 U.S. 843 (1947); *Bell* v. *Porter*, 159 F. 2d 117 (C.A. 7, 1946), cert. denied 330 U.S. 813 (1947); *Bridgeman* v. *Ford, Bacon & Davis*, 161 F. 2d 962 (C.A. 8, 1947); *Rokey* v. *Day & Zimmerman*, 157 F. 2d 736 (C.A. 8, 1946); *McLaughlin* v. *Todd & Brown, Inc.*, 7 W.H. Cases 1014; 15 Labor Cases para. 64, 606 (N.D. Ind. 1948); *Campbell* v. *Jones & Laughlin*, 70 F. Supp. 996 (W.D. Pa. 1947).)

(b) INTERRUPTIONS OF SLEEP.—If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted. For enforcement purposes, the Divisions have adopted the rule that if the employee cannot get at least 5 hours' sleep during the scheduled period the entire time is working time. (See *Eustice* v. *Federal Cartridge Corp.*, 66 F. Supp. 55 (D. Minn. 1946).)

The Committee intends this regulation to be applicable to the numerous local firefighting units which work 24 hour shifts. It is the Committee's expectation that the Secretary of Labor will exclude from "hours worked" calculations, those regularly scheduled bona fide meal periods and sleeping periods of not more than eight hours which either the employer and employee expressly agree are regularly scheduled meal and sleep periods, or, where no such express agreement exists, which can be assumed to be implicitly agreed upon by the employer and employee on the basis of the existence over a reasonable period of time of regularly scheduled meal and sleeping periods.

CANAL ZONE

The bill raises the minimum wage in the Canal Zone at the same rate as the mainland, maintaining the historical parity between workers in the Canal Zone and their counterparts on the mainland.

The Committee believes that current conditions do not warrant exempting the Canal Zone from minimum wage increases, or restricting those increases in respect to mainland increases.

The argument was made to the Committee that further raises in the minimum wage would serve to accelerate the disparity in wage rates between workers in the Republic of Panama and workers in the Canal Zone. In response to this same argument, the Senate, in the 1957 Committee report on an amendment specifying the Congressional intent that the minimum wage should apply to the Canal Zone, stated that:

> It is generally agreed that relatively few Panamanian citizens benefit by the present coverage of the minimum wage. The continued application of the . . . minimum can hardly be construed, therefore, as disrupting the economy of a nation of 800,000 inhabitants. On the other hand, United States citizens employed in the Canal Zone, may be adversly affected by permitting the employment of competing local labor at substandard rates of pay.

This Committee is aware of the opposition of the Department of State and the Canal Zone Government to increasing the minimum wage for Canal Zone workers but fails to find justification for this position. By giving a minimum wage increase to these workers, the Committee continues its long-standing practice of not discriminating against these workers of the Canal Zone. Although the objections to this increase are based on predictions of a $6 million annual increase in cost to the Canal Company and ultimately to the United States Government unless canal tolls are increased, the Committee finds this claim difficult to believe in view of the fact that the average wage for a manual laborer in the Canal Zone is already $2.10 per hour.

With respect to the question of increasing tolls, oversight of Canal operations is not within the jurisdiction of this Committee and we take no position on that matter. We do note, though, that tolls have not been increased during the almost sixty years the Canal has been in operation. We also note that the Canal Zone Government admits an increase has been under active consideration for over two years and was not initiated by anything this Committee has done with respect to the FLSA.

Finally, we note that the Government of the Republic of Panama has flatly stated that failure to increase the minimum wage applicable in the Canal Zone along with that applicable in the United States will adversely affect relations between our two countries.

THE NEED FOR NEW ENFORCEMENT PROVISIONS

The amendment on the maintaining of suits by state employees was recommended by the Department of Labor and unanimously concurred in by the Committee and was made necessary by the Supreme Court's

opinion in *Employees of the Department of Public Health and Welfare of Missouri* v. *Department of Public Health and Welfare of Missouri*, —— U.S. —— (1973). There, the court held that Federal Court suits for enforcement of the FLSA brought by state employees pursuant to Section 16(b) of the Act could not be maintained and did so on the express ground that the Act does not authorize them. "(W)e have not found a word in the history of the 1966 amendments to indicate the purpose of Congress to make it possible for a citizen of that state or another state to sue the state in the Federal Courts." (Slip op. at p. 6.) This amendment makes this committee's and Congress' intent clear.

The amendment provides that employees of a public agency (defined to include the Government and agencies of the United States, a State or political subdivision, or any interstate governmental agency) may maintain an action against that public agency under section 16(b) in any Federal or State court of competent jurisdiction, and suspends the statute of limitations to preserve rights of actions of State or local government employees which would otherwise be barred as a result of the Supreme Court's decision. It is emphasized that this provision is a limited suspension of the statute of limitations and is applicable only to certain public employees.

The Court did not question its earlier decision in *Maryland* v. *Wirtz* which upheld the extension of the Act to state-operated schools and hospitals. Nor did the Court indicate that, although Congress could thus extend coverage, it is powerless to provide what Congress considers meaningful and necessary enforcement devices. Indeed, the majority opinion suggests the contrary when it refuses to infer, in the absence of clear language to this effect, "that Congress conditions the operation of these facilities on the forfeiture of immunity from suit in a federal forum." (*Id.* at slip op., pp. 6–7.)

Experience under the 1966 Amendments has shown that voluntary compliance with the Act's requirements cannot be expected from the state so as to render enforcement mechanisms unnecessary. Experience during that same period demonstrates that the enforcement capability of the Secretary of Labor is not alone sufficient to provide redress in all or even a substantial portion of the situations where compliance is not forthcoming voluntarily. Since the 1974 Amendments extend FLSA coverage to additional state government employees, it is now all the more necessary that employees in this category be empowered themselves to pursue vindication of their rights.

AGRICULTURAL COVERAGE

S. 2747 does not change the basis under which agricultural employers become subject to the FLSA. The requirement remains at least 500 man-days (one-man-day being any day during which an employee performs any agricultural labor for not less than one hour) during the peak quarter of the preceding year. However, S. 2747 does alter the computation of man-days by adding to the definition of "employee" the previously excluded group of all local, seasonal hand-harvest laborers. The effect will be to increase the number of covered farms, but its percentage vis-a-vis all farms in the nation will remain relatively small. At present, only 3% of all farms are under the FLSA

(28,000 of the 907,000 farms which had employed one or more hired farmworkers). Even with the new computation well over 90% of the country's farms will remain outside of minimum wage standards.

The intention reflected by S. 2747 is to preserve the historical exemption of the family owned and operated farm. Thus the Department of Labor estimates that agricultural enterprises which employ up to seven employees would on the average remain outside of the Act. The family of the employer-owner is also exempt from both the man-hour computation and the minimum wage standard.

Although local, seasonal hand harvest laborers are included in the new man-day count, they will continue to be exempt from the minimum wage as will farmworkers under 16 if they are working with a parent, and are paid the adult piece rate. All child labor prohibitions would be applicable.

Contrary to the often made statement that increasing the minimum wage for farmworkers would have a depressant effect on the total agricultural labor force, facts indicate that the farmworkers most affected by the minimum wage rate have fared better than the overall agricultural labor force. Thus, despite an overall drop in farm employment of 16% between 1968 and 1971, the decline in employment on noncovered farms was more than that for covered farms (21% v. 9%.)

AGRICULTURAL WAGE RATE

S. 2747 provides parity for covered farmworkers. Under this proposal the Fair Labor Standards Act (FLSA) would be amended to achieve a $2.20 minimum wage for all covered workers, including those employed in agriculture.

To facilitate adjustments to this new concept of wage equality, a period of staged increments has been introduced. The schedule would be as follows: $1.60 during the first year after the effective date, $1.80 during the second year, $2.00 during the third year, and $2.20 thereafter.

Prior to 1966, farmworkers had never received any federal minimum wage protection. In that year, the first such standard for agricultural employees was established at $1.00 per hour. The current rate of $1.30, a result of a two-year adjustment from the 1966 rate, still leaves farmworkers more than 20 percent behind the mainstream of covered employees, whose present minimum wage rate of $1.60 is already economically passé.

Ironically, though one of the hardest working members of the American labor force, the farmworker is also one of its poorest members. The typical full-time farmworker, who according to the Department of Labor averages 1,500 hours per year, can not meet even the poverty level ($3,643 in 1972 for a farm family of four) at today's wage rates. An estimated 17% of the covered farmworkers earn less than the proposed first year minimum of $1.60. Even with the proposed increment schedule, a farmworker will still not be able to bring his or her family above the subsistence level without having either multiple jobs or a family with multiple wage earners.

Over a 20-year period (1949–1969) farm labor costs (the total wage bill) increased 17 percent from $2.8 billion in 1949 to $3.3 billion in 1969. By way of comparison, total farm production expenses rose from $18 billion to $38.7 billion—an increase of nearly 116 percent—during

the same period. While food prices have been rising rapidly during the past several years, in light of the above figures, wages paid to farmworkers cannot be held to be the reason.

Statistics from the Department of Agriculture show that in 1971, wages paid to hired farmworkers ($3.8 billion) represented about 8 percent of the farmer's total cash receipts from marketings ($53 billion), as opposed to a 14 percent figure for 1950.

USDA reports that the farmer's share of the retail cost of the market basket was 38 percent in 1971. Thus, the weighted cost for farm labor represented only slightly more than 2 percent of the retail cost of food to the average consumer, or slightly less than $25.00 per year. (The retail cost of the market basket for 1971 was $1,244.00).

Department of Labor, Employment Standards Administration, calculations indicate that under S. 2747 the annual wage bill increase for farmworkers will be 1.4 percent for 1974, 1.7 percent for 1975, 2.2 percent for 1976 and 2.4 percent for 1977. If all other factors are held constant, compounding the annual wage bill increases over the four-year period would result in a net rise of only two-tenths of one cent (from the present 2.1 cents to 2.3 cents) of each food dollar directly attributable to wages paid to hired farm labor.

Despite the alarmingly high rate of food price increases during the last few years, it should be noted that the percent of money expended for food relative to per capita disposable income has continued to drop steadily from 17.7 percent in 1967 to 15.6 percent during the first quarter of 1973. While this is small solace to the consumer who must contend with more than just food expenditures, it does indicate the minimal impact of an increase in the minimum farm wage on the consumer's food dollar.

CHILD LABOR IN AGRICULTURE

S. 2747 amends the Fair Labor Standards Act by prohibiting the employment in agriculture of all children under the age of 12, except those working on farms owned or operated by their parents, or on farms not covered by the Act under the 500 man-day test, or on conglomerate farms, and that parental consent shall be required for children on non-covered farms. Children ages 12 through 15 will be permitted to work only during hours when school is not in session, provided that all 12 and 13 year olds must either receive written parental consent or work only on farms where their parents are employed.

Presently there are no prohibitions against child labor in agriculture, except those concerning children under 16 years of age working when school is in session, or engaging at any time in certain hazardous occupations. S. 2747 makes no change in the existing FLSA provision regarding hazardous occupations.

The Committee's bill adds two new administrative provisions in an effort to strengthen and promote vigorous enforcement of the child labor restrictions. S. 2747 proposes civil penalties up to $1000 for any violation of the child labor provisions under FLSA. In addition, the Secretary of Labor will be authorized to issue regulations requiring employers to obtain proof of age from all prospective employees covered by the child labor portions of the FLSA.

Thirty-five years ago, Congress reacted to a national outcry by banning industrial child labor. However, since 1938 the nation has per-

mitted in the fields what it has prohibited in the factories—oppressive and scanadalous child labor. This Committee once again urges that this shameful double standard be no longer tolerated.

For the past decade, hearings in both Houses of Congress have amply documented the tragic and disgraceful situation regarding child labor in agriculture. Basically, there emerge three reasons—each one sufficient by and of itself, as to why child labor in agriculture in its present form must be ended: (1) it is physically and mentally detrimental to the health and well-being of the children; (2) it is a social depressant, stunting the intellectual growth and opportunity of those subject to this vicious cycle; and (3) it is, as was industrial child labor years before, economic exploitation of human resources.

Department of Labor statistics for 1970 showed an 18% increase in the number of minors found to have been working illegally on farms over the previous year. Fifteen percent of these violations were for children nine years of age or less.

In the National Safety Council's annual book "Accident Facts, 1970," statistics show that out of 14,200 occupational deaths in 1969 in a total work force of 79 million people, agriculture, which employed only 3,800,000 workers, accounted for 2,500 deaths (as well as 210,000 disabling injuries). Manufacturing by comparison with its nearly 20 million workers accounted for 1900 occupational fatalities. Indeed, after construction and mining, agriculture is the next most hazardous industry.

Though exact figures are difficult to come by, it is estimated that between one-third and one-fourth of all hired farmworkers are children under 16. One estimate by the Department of Agriculture in 1970, put the number around 800,000. Of this number, 375,000 are said to be between 10 and 13 years old. The Department of Labor statistics indicate that children generally, and specifically in agriculture have more than their share of accidents. For example, an analysis of fatal farm tractor accidents in Ohio for the 10-year period, 1956–65, shows that 19 percent of the victims were under 16 years of age.

Medical evidence as to the unhealthy effect of child labor in agriculture is so clear and convincing it would seem unnecessary to emphasize the point. Yet there are those who contend that such work is to the contrary, a healthy experience. Chagrined by this attitude, a member of the migrant labor committee of the American Academy of Pediatrics found it incredible that in this "enlightened age" new medical evidence should have to be presented to show the harmful effects of child labor under conditions which have been laboriously documented over the years.

In 1970, an investigating committee of pediatricians in Texas reported that almost every child farmworker examined has some physical defect. The doctors noted that the children were undersized, thin, anemic and apathetic. They discovered many cases of back, hip and lower extremity pain in their children which resembled degenerative osteoarthritis, usually found in older people.

A 1972 Report by the International Labour Office entitled "Minimum Age for Admission to Employment," stated:

> * * * concerning children in agricultural employment, it is worth emphasizing that, contrary to traditional ideas on the healthful nature of farm work, modern agriculture exposes

> workers to at least as much physical risk as most other sectors. This is not only a matter of heat, sun, dust and insects or the strains caused by stooping and lifting: the increasing mechanization of agriculture has made it an especially hazardous occupation. The dangers created by the use of power driven machinery, such as harvesters, threshers, reapers, tractors, are obviously all the greater for children and young persons. * * *

The educational level of adult farmworkers was the lowest of all major occupational groups, 8.4 years of school versus an average of 12.2 years for all workers. Children of these farmworkers, especially those of the migrants have few educational opportunities and lower educational attainment than any other group of American children. Based on Department of Labor 1970 figures, over half (57%) of those children found illegally employed on farms were below normal school grade level. For migrants 68% of such children were below average, with 86% of the 14-year olds and 91% of the 15-year olds below proper grade level (from one to three grades).

In many cases, States and local authorities only aggravate this deplorable situation. In some states, children of migratory laborers are exempt from compulsory education laws.

Finally, it is clear that the employment of children in agriculture is not only a direct source of cheap labor, but has the effect of depressing the average adult wage as well. Thus, the poor farmworker family is often forced to acquiesce in the exploitation of his own children because of the meager wages received by the family's adult workers.

Employers of farm labor argue that children are needed because of a shortage of farmworkers. Yet figures show that it is the farm labor demand, rather than the supply, which has been decreasing. Changing agricultural technology, not the lure of urban industry has shrunk the pool of farmworkers.

There would be no farm labor supply problem if the exploited children were removed from the labor force, and a decent adult working wage were substituted. The committee has concluded that the price of keeping agricultural operating costs down and fighting inflation can no longer be the sight of an eight-year-old child crawling in 100° heat for ten hours. The fresh-air sweatshop should become a thing of the past.

PUERTO RICO AND THE VIRGIN ISLANDS

The bill provides for the gradual achievement of minimum wage parity for workers in Puerto Rico and the Virgin Islands with workers on the mainland.

The minimum wage for certain hotel, motel, restaurant and food-service employees, as well as employees of the Federal and Virgin Island governments, will be the same as the minimum wage for counterpart mainland employees on the effective date.

For other covered workers in Puerto Rico and the Virgin Islands, S. 2747 provides as follows:

> (1) Effective on the effective date of the legislation, presently covered employees are to receive the following increases:
>
> (A) an increase of 12 cents an hour if their wage order rates are less than $1.40 an hour; and

(B) an increase of 15 cents an hour if their wage order rates are $1.40 an hour or higher.

(2) Newly covered employees (including commonwealth and municipal employees) are to have their wage rates set by special industry committees and this wage rate may not be less than 60 percent of the otherwise applicable rate under section 6(b) or $1.00 an hour, whichever is greater.

(3) All employees (other than commonwealth and municipal employees) will receive, beginning one year after the effective date of this legislation, yearly increases as follows:

(A) increases of 12 cents an hour per year if their wage order rates are less than $1.40, and

(B) increases of 15 cents an hour per year if their wage order rates are $1.40 an hour or higher.

Under this provision, when an employee's wage rate reaches $1.40 that employee will then receive the 15 cents annual increase. If such an increase for any employee will result in a wage order rate less than 60 percent of the otherwise applicable minimum wage or $1.00 an hour, whichever is greater, then the increase for such employee will be such greater figure.

(4) If a prescribed increase in the wage order rate of an employee would result in a rate equal to or greater than the otherwise applicable minimum wage rate of section 6 (a) or (b), the minimum wage rate for that employee will be governed by such section and such employee will no longer be covered under a wage order.

(5) It is made clear that special industry committees may, in accordance with section 8, also provide increases in wage order rates (including rates for commonwealth and municipal employees).

(6) The authority for hardship review of the increases by special committees is discontinued.

The bill also provides that special industry committees shall recommend the otherwise applicable rate under section 6(a) or 6(b) except where substantial documentary evidence, including pertinent financial information, demonstrates an inability to pay such rate.

The bill further provides that a court of appeals may upon review of a wage order specify the minimum wage rate to be included in in such wage order.

Provisions permitting the setting of lower rates by industry committee in Puerto Rico and the Virgin Islands were incorporated into the FLSA in June 1940, almost 32 years ago. However, from the outset a clear intent has been manifest in the FLSA to achieve ultimate parity. Section 8(a) of the Act sets forth this policy:

> The policy of this Act with respect to industries or enterprises in Puerto Rico and the Virgin Islands engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage prescribed in paragraph (1) of Section 6(a) in each such industry.

In the course of various evaluations of the industry committee procedures, questions have been raised as to whether a need still exists for such special industry committee action. The procedure has been criticized as time-consuming, costly and unfair to mainland employers.

Opponents of the present procedure have also noted how little progress has been made in raising the wage floor in some industries, despite improved economic conditions, and substantial increases in productivity.

The Committee was persuaded to provide for eventual parity for a wide variety of reasons. Consideration was given to the fact that the cost-of-living has been rising almost as rapidly on the Islands as on the mainland. For example, the Consumer Price Index (1967=100) for all items in 1972 was 117.9 in Puerto Rico and 125.3 on the mainland. Moreover, the index of food prices was 122.9 in Puerto Rico as compared with 123.5 on the mainland; the index of transportation prices was 116.6 in Puerto Rico versus 119.9 on the mainland. And for personal care, the Puerto Rican index was 118.6 as compared with 119.8 on the mainland. In addition, profit margins of establishments in Puerto Rico are usually greater than for their national counterparts, and employers enjoy special advantages, such as exemption from Federal income taxes, subsidies, and exemption from local income taxes for a period of from 10 to 17 years, depending on location.

The schedule for achieving parity, as set forth in the bill, makes it possible for employers to make long-range plans for adjusting to the scheduled wage changes. The increase in wage order rates of 12 to 15 cents an hour on the effective date (for most activities) on the Islands is less than the increase in the mainland. It is recognized that many of the employers in Puerto Rico and the Virgin Islands who have been covered by the FLSA since its inception could adjust to a $0.40 an hour minimum wage increase on the effective date with ease. However, a more modest increase was decided upon to insure that the increases would proceed smoothly and that substandard wages would be eliminated by a predetermined target date.

The Committee was impressed by the extensive financial and tax incentives designed to attract business to Puerto Rico. In "A National Profile of Puerto Rico" (March 1971), Ernst and Ernst described in detail the various benefits to business of locating in Puerto Rico ranging from "100 percent exemption from income tax on industrial development income for qualified firms" to such special location incentives for operations in areas outside of metropolitan San Juan as offsets for costs of training, salaries, rents and mortgages. The Committee compared the advantages designed to attract business to Puerto Rico with wage data in the summary on labor, in Ernst and Ernst. In this summary, the average hourly wage in 1969 for 20 industry groups in Puerto Rico is shown at $1.82. The comparable figure for the mainland is given as $3.10. The Committee's intent is to improve the status of the Puerto Rican worker; parity with mainland workers with respect to the minimum wage is a necessary first step.

In 1972, the Senate rejected an amendment to limit the wage increases in Puerto Rico and the Virgin Islands by a vote of 62–30.

EXEMPTIONS

S. 2747 repeals or modifies a number of the exemptions presently incorporated in the Fair Labor Standards Act, including some of the complete minimum wage and overtime exemptions as well as some which apply only to the overtime standard.

The FLSA is a complex piece of social legislation. In large part the complexity of the law is an outgrowth of compromises entered into over a 30-year period in order to achieve, to the fullest extent possible, the basic purposes of the Act.

Careful review led the Committee to conclude that a number of the exemptions presently incorporated into the Act should now be eliminated or sharply modified. The Committee accepts as simple equity the basic concept that all workers are entitled to a meaningful minimum wage and to premium pay for overtime work. The Committee generally approached the matter of special exemptions by applying a simple rule. Unless the proponents of an exemption made the case for continuing the exemption in its present form, it was modified or removed. The Committee is aware that the low-wage worker, whose economic status is in large part determined by the FLSA, does not typically communicate with the Congress either by testifying on bills or by writing letters outlining his position on the legislation. As in the past, the Congress must represent the public conscience in the matter of the low-wage workers and minimum wage legislation.

The Committee is aware that the Department of Labor has been studying these exemptions over the years and many reports have been submitted to the Congress recommending that these exemptions be eliminated, phased out or modified. However, the Congress has taken action to remove only a limited number of special exemptions over the years.

Each time that the Act has been amended most of the special exemptions have been ignored. In large part, this reflected the fact that amendments to the Act are not enacted until the level of the minimum wage is obsolete and the primary attention of the Congress has been limited to raising the minimum wage to a meaningful level. Only in the course of enacting the last two series of amendments—1961 and 1966—did the Congress expand coverage at the same time as it raised the minimum wage. Although the question of whether a need for many of the special exemptions still existed was raised and there was recognition that there was no justification for continuing at least many of them, action was postponed.

This Committee can see no justification for further delay. The research surveys conducted by the Department of Labor have been summarized in special reports to the Congress as part of the annual submission under Section 4(d) of the FLSA. The special economic evaluations and appraisals were included in the Annual Reports of the Administrator of the Wage and Hour and Public Contract Divisions of the Department of Labor.

Included among the research surveys were studies on motion picture theaters, small logging, agricultural processing, state, county, and municipal employees, motor carriers, domestics, food service employees, and tips as a part of wages.

The administrative studies conducted by the Department of Labor have run the gamut of studies from those designed to expand coverage to include all activities "affecting commerce" to studies of how best to amend the statute to insure that employees are actually paid the back wages found due them under the statute.

The Committee believes that these matters have been studied too long and that steps to correct injustices must be taken now. The Com-

mittee notes that Secretary Brennan agreed in part with the view of the majority when he appeared before this Committee on June 7, 1973. He said, in part:

> . . . one aspect of the Fair Labor Standards Act that gives me concern is the provisions which give certain industries exemptions from the minimum wage and overtime standards and in some cases just the overtime standard.

The Committee has concluded that certain exemptions can be eliminated or modified at this time without harm to the industry involved.

STUDY OF ECONOMIC EFFECTS OF CHANGES MADE BY THIS BILL AND OF REMAINING EXEMPTIONS

The bill provides for a special study by the Secretary of Labor, in addition to his usual annual report of the justification, or lack thereof, for all the minimum wage and overtime exemptions remaining under sections 13(a) and 13(b) of the FLSA. The Secretary's report on this study is due by January 1, 1976. Many of the remaining exemptions in section 13(a) and (b) have been in the law since 1938, and the Committee believes that each of them should be reviewed in the light of current conditions.

Motion picture theaters

S. 2747 repeals the minimum wage but retains the overtime exemption currently applicable to all employees of motion picture theaters. Approximately 59,000 workers are currently denied the protection of the FLSA because of this blanket exemption.

A 1966 study of motion picture theaters by the Department of Labor disclosed the prevalence of extremely low wages in the industry. While motion picture projectionists were paid well above the minimum wage, most employees were paid substandard wages. Concession attendants, cashiers, ushers, and janitors were paid well below the minimum wage.

In 1961, when motion picture theaters received a special minimum wage and overtime exemption, the poor economic condition of the industry was cited by industry representatives as a major reason for the exclusion.

This argument was repeated in 1966 when the Congress was considering amendments to the FLSA which would have eliminated this exemption. Industry representatives argued against removing the exemption on the basis that increased labor costs could not be passed on to consumers in the form of higher admission prices by motion picture theaters because of the depressed state of the industry.

However, the validity of this argument is now open to serious challenge. Price data published by the Bureau of Labor Statistics of the Department of Labor indicate that indoor movie admission costs have increased by 39 percent between 1967 and the beginning of 1972. Admission costs in drive-in movies have increased even more—43 percent since 1967. These increases were far in excess of price increases for products of covered industries and for almost all services covered by the Act.

The Congress has long recognized the need for minimum wage protection for employees in motion picture theaters. Conditions in the industry and the present price structure indicate that removal of this

exemption would bring substantial benefits to low-wage workers and could be easily absorbed by the industry.

Small logging crews

The Committee bill removes the minimum wage exemption currently available to forestry and lumbering operations with 8 or fewer employees but retains an overtime exemption for such lumbering operations.

Prior to the 1966 amendments, the exemption applied to employers with 12 or fewer employees. In enacting the 1966 amendments the Congress reduced the 12-man test to an 8-man test and the House Committee report commented on the change as follows:

> The decision on eight employees was made after careful consideration and investigation of conflicting facts. The Committee believes the eight-man criterion to be a sound basis for exemption at the present time, but intends to further investigate these logging operations.

According to the Department of Labor, about 42,000 employees are currently exempt under this provision. Many of these workers are paid very low wages and are, in effect, being asked to subsidize their employers.

The Committee found no adverse effect when minimum wage and overtime protection was extended to employers with 8–12 workers. However, employees of such loggers did benefit significantly from the protection of the FLSA. The Committee is persuaded that all logging employees should enjoy the minimum wage protection of the Act, and that this can be accomplished with ease at this time. The Committee was not satisfied that a case had been made for a continued minimum wage exemption. The Committee considered removing the complete minimum wage and overtime exemption but elected to retain the overtime exemption at this time. This continues the gradual approach to full coverage which has been applied to this industry.

The Committee considered the recordkeeping problems raised by the industry but concluded that current Department of Labor regulations on this point offered sufficient flexibility to meet the legitimate needs of this industry. The Committee noted in this regard that small loggers have been able to keep tax records and complex piece-rate records for some time.

Shade-grown tobacco

S. 2747 would remove the special minimum wage but retain the overtime exemption applicable to employees engaged in the processing of shade-grown tobacco prior to the stemming process for use as a cigar wrapper tobacco.

Prior to the *Mitchell* v. *Budd*, 350 U.S. 473 (1956) decision, it had been held that the processing of shade-grown tobacco was a continuation of the agricultural process and hence came within the scope of the term "agriculture." However, the U.S. Supreme Court ruled that workers engaged in processing leaf tobacco for cigar wrappers after delivery of the tobacco to bulking plans were not engaged in agriculture and were not exempt as agricultural employees, regardless of whether (1) the plants were operated exclusively for the processing of the tobacco grown by the operators, or (2) the employees who worked on the farms where the tobacco was grown also worked in the plants

processing the tobacco. The Supreme Court decision laid particular emphasis on the fact that the processing operations substantially change the natural state of the leaf tobacco and that the farmers who grow the tobacco do not ordinarily perfom the processing. Typically, this work is done in bulking plants.

The 1961 amendments to the FLSA provided a special exemption for processing shade-grown tobacco, thus negating the decision of the Supreme Court.

The Committee bill removes the special exemption because it has created a situation in which a tobacco processing employee who would otherwise enjoy the protection of the FLSA, loses such protection solely because he had previously worked in the fields where the tobacco was grown; co-workers who had not worked in the field enjoy "fair labor standards." The student certification program under section 14 of the Act as it relates to such field work is unaffected by this bill.

Agricultural processing industries

S. 1861 phases out the existing partial overtime exemptions for seasonal employers generally (Section 7c), and seasonal or seasonally-peaked employers specifically engaged in agricultural processing of perishable raw commodities (Section 7d). Based on 1973 Department of Labor estimates, 714,000 workers were employed in establishments qualifying for these exemptions.

The phase out of section 7(c) and 7(d) exemptions other than for cotton processing and sugar processing, is as follows:

1. On the effective date the seasonal periods for exemption are reduced from 10 weeks to 7 weeks and from 14 weeks to 10 weeks.
2. On such date, the workweek exemptions are reduced from 50 hours to 48 hours.
3. Effective January 1, 1975, the seasonal periods for exemption are reduced from 7 weeks to 5 weeks and from 10 weeks to 7 weeks.
4. Effective January 1, 1976, the seasonal periods for exemption are reduced from 5 weeks to 3 weeks and from 7 weeks to 5 weeks.
5. Effective January 1, 1977, sections 7(c) and 7(d) are repealed.

At present under Section 7(c), employers who are determined by the Secretary of Labor to be in industries seasonal in nature are free from FLSA overtime jurisdiction for a 14-week period during which employees may work up to 10 hours a day or fifty hours a week without being subject to a time and one-half wage rate.

Under the existing 7(d) exemption, employers designated by the Secretary of Labor to have either seasonal or seasonally-peaked agricultural processing operations involving perishable raw commodities are entitled to a 14 week period free of FLSA overtime restrictions if their employees do not exceed 10 hours a day or 48 hours a week during that time period.

Both Sections 7(c) and 7(d) have identical reciprocity clauses which entitles any employer who qualifies under the definition of both sections to receive an aggregate exemption of two ten-week periods (one under 7(c) and one under 7(d)) outside of the FLSA overtime standard. Several industries have been determined as qualifying for the dual exemption.

The origins of these two sections date to the beginning of the FLSA in 1938. The predecessor of the current Section 7(c) was the former

Section 7(b)(3) whose exemption provided for up to 12 hours a day or 56 hours a week before the FLSA overtime standard became effective. The present Section 7(d) is successor to the former section [7(c)], which had permitted among other things, year-round overtime exemptions for several categories of employers, engaged in agricultural processing. In addition, employers qualifying under both former sections could claim up to an aggregate of 28 weeks of exemptions.

However, in 1966, after 28 years of favored treatment, Congress determined that the agricultural processing industry no longer warranted the original Act's broadbrush treatment. Thus, as a result of the 1966 FLSA amendments Congress narrowed the exemptions to their present state.

The complete elimination of the agricultural processing overtime exemption was anticipated in the 1966 FLSA Amendments. The Conference Report stated in part:

> It was the declared intention of the Conferees to give notice that the days of overtime exemptions for employees in the agricultural processing industry are rapidly drawing to a close because advances in technology are making the continuation of such exemptions unjustifiable.

A detailed two-volume Department of Labor survey, entitled "Agricultural Handling and Processing Industries—Overtime Exemptions Under the Fair Labor Standards Act, 1970", found with reference to Sections 7(c) and 7(d):

> (1) Existing exemptions are not fully utilized.
>
> (2) Many processing establishments are now paying premium rates for hours over 40 a week.
>
> (3) Currently, some industries which qualify for 20 weeks of exemption are less seasonal than others which qualify for 14 weeks.
>
> (4) A 40 hour basic straight time standard would eliminate inequities which currently exist between employers who now pay premium overtime rates either because they elect to do so voluntarily or because they are covered by a collective bargaining agreement and employers who avail themselves of the overtime exemption.
>
> (5) Additional jobs could be created by second and third shift operations in those industries where large shipments of raw materials are received in relatively short periods.
>
> (6) Technological advances in recent years have lengthened the storage life of perishable products.
>
> (7) Grower-processor contracts permit the processor to specify the time for planting, harvesting, and delivery, and thus make possible better work-scheduling.

Based on the above finding, former Secretary of Labor (and present Secretary of the Treasury) George Shultz in his "Report to the Ninety-First Congress on Minimum Wage and Maximum Hours under FLSA" (January 1970), concluded:

> The study of overtime exemptions available to the agricultural handling and processing industries indicates the need

> for re-appraising the favored position which has long been given these industries through exemption from the 40 hour maximum work week standard. It is my recommendation that the exemptions currently available under Section 7c, 7d, . . . be phased out.

These same thought were echoed by the current Secretary of Labor, Peter Brennan, at hearings before the Labor Subcommittee on June 7, 1973. Mr. Brennan stated:

> We believe that the Fair Labor Standards Act can be modified as to its present partial overtime exemption for seasonal industries and industries engaged in processing fresh fruits and vegetables.
>
> At one time the fresh food processing industry was in a very unusual position. Since it is entirely dependent on the timing and abundance of agricultural produce for its perishable "raw materials", it was necessary to operate almost continuously during harvest season. A great deal of overtime work was required in order to process the fresh food coming in from the farms before it spoiled.
>
> Advancements in technology, however, have now made it possible for initial processing to be accomplished rapidly and overtime requirements have been reduced. We believe that the present law can now be changed and would be glad to work out language with the Committee that would not adversely affect the employment situation nor add undue pressures to food prices, which are a matter of special concern in the present economic picture.

Thus, the record is clear. Since the 1966 Amendments reduced the overtime exemption for agricultural processing there has been a sharp decline in the amount of overtime worked by employees in the affected industries.

Claims of adverse effects on the industry have been greatly exaggerated. There is every reason to believe that the industry can make the necessary adjustment when these special exemptions are removed.

S. 2747 provides for a limited overtime exemption (14 weeks, 10 hours per day, and 48 hours per week) for certain employees engaged in activities related to the sale of tobacco. Such employees are currently covered by the section 7(c) exemption pursuant to determination by the Secretary.

Railroad and pipelines

The Fair Labor Standards Act currently exempts from the overtime provisions of the Act any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act.

Part I of the Interstate Commerce Act pertains to railroad employees and employees of oil pipeline transportation companies.

The Committee bill would retain the overtime exemption for railroad employees but would remove the overtime exemption for employees of oil pipelines.

The Committee, in reviewing the historical basis for this exemption, found that there was no testimony with respect to oil pipeline transportation companies.

This industry was apparently exempted because it is covered along with railroads under part I of the Interstate Commerce Act and a case had been made for exempting railroad employees.

The Committee has concluded that there is no basis for continuing to provide an overtime exemption for employees of oil pipelines. Employees of gas pipelines are now covered by the overtime provisions of the FLSA. The action of the Committee eliminates a long-time competitive inequity between oil pipelines and gas pipelines.

Seafood processing

S. 2747 phases out the overtime exemption currently available in Section 13(b)(4) for "any employee employed in the processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any product thereof," as follows:

1. In the first year after the effective date of the 1974 Amendments, the workweek exemption is 48 hours.
2. In the second year, the workweek exemption is 44 hours.
3. Effective on the beginning of the third year, the exemption is repealed.

The Fair Labor Standards Act as originally enacted provided an exemption under Section 13(a)(5) for:

> Any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or byproducts thereof.

The 1949 amendments retained the complete exemption for fishing and processing, except canning. The minimum wage exemption for canning was eliminated, but the overtime exemption was retained under a new Section 13(b)(4).

The 1961 amendments removed the minimum wage exemption for employees employed in "onshore" operations, such as processing, marketing, distributing and other fish-handling activities. The overtime exemption for "onshore" operations was retained by adding such operations to the exemption already provided for the canning of seafood under Section 13(b)(4).

Removal of the overtime exemption for seafood canning and processing is part of the Committee's effort to achieve parity under the law for all workers to the maximum extent possible at this time. Just as in the case of agricultural processing, no case has been made for continuing the exemption.

Local transit

Currently, the overtime provisions of the Fair Labor Standards Act do not apply with respect to any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban, or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway and carrier are subject to regulation by a State or local agency.

The Committee bill would eliminate this overtime exemption in three steps, except with respect to time spent in "charter activities" under specified conditions. The hours of employment will not include hours spent in charter activities if—(1) the employee's employment in such activities was pursuant to an agreement or understanding with the employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment. These conditions are set so as to emphasize that the Committee intends that hours spent in "charter activities" as a part of the regular workday or workweek are to be included in the definition of "hours worked" under the Act.

The Committee has been persuaded that the transit industry has been adjusting to a shorter workweek for some time now. Collective bargaining agreements typically call for overtime after 40 hours a week—and in many cases after 8 hours a day. A large segment of the industry is now covered by such contracts. In addition, an overtime standard was applied to nonoperating employees of the industry by the 1966 amendments. The Committee bill requires that employees be paid time-and-one-half their regular rate of pay for all hours over 48 per week, beginning with the effective date; after 44 hours, 1 year later; and after 40 hours at the end of the second year and thereafter. This gradual approach ensures ease of adjustment.

It is noted that by virtue of the Committee's action on coverage of State and local government employment, together with its action on overtime pay in the local transit industry, operating employees of publicly and privately owned transit companies will be treated identically.

A question was raised concerning the applicability of the overtime provisions of the Act in the case of certain collective bargaining agreements involving local transit in the New York area which provide for straight-time pay for certain off-duty hours. The Committee notes that section 7(e)(2) of the FLSA provides that "payments made for periods when no work is performed due to . . . failure of the employer to provide sufficient work . . . are not made as compensation for hours of employment." The Committee also notes that the Department of Labor's regulations concerning "Hours Worked" contain the following provision (29 C.F.R. 785.16(a)):

"OFF DUTY"

"(a) *General.* Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case."

In 1972, by vote of 68–24 the Senate rejected an amendment to retain the overtime exemption for local transit.

Hotels, motels, and restaurants

S. 2747 eliminates the complete overtime exemption for employees employed by hotels, motels and restaurants and substitutes a limited overtime exemption as follows:

During the first year overtime compensation will be required for hours of employment in excess of 48 in a week and after the first year

such compensation will be required for hours of employment in excess of 46 in a week. For maids and custodial employees of hotels and motels the phaseout is as follows:

1. 48 hours in the first year.
2. 46 hours in the second year.
3. 44 hours in the third year.
4. Repealed thereafter.

In setting an overtime standard for employees of hotels, motels and restaurants the Committee recognized that the length of workweeks have been declining in these activities. It is interesting to note that when minimum wage coverage was extended to these workers by the 1966 amendments, the Department of Labor reported to the Congress that there was a reduction in the prevalence of long workweeks in these industries, even though an overtime exemption was retained.

Tip allowance

S. 2747 modifies section 3(m) of the Fair Labor Standards Act by requiring employer explanation to employees of the tip credit provisions, and by requiring that all tips received be paid out to tipped employees.

Currently, the law provides that an employer may determine the amount of tips received by a "tipped employee" and may credit that amount against the applicable minimum wage, but amounts so credited may not exceed 50 percent of the minimum rate. Thus, a tip credit of up to $.80 an hour may currently be deducted from the minimum wage of a tipped employee. (A tipped employee is defined as an employee who customarily and regularly receives more than $20 a month in tips.)

The Committee re-examined the role of tips as wages and the concept of allowing tips to be counted as part of the minimum wage. The Committee reviewed the study of tips presented to the Congress by the Department of Labor in 1971 as well as provisions of State minimum wage laws which permit the counting of tips toward a minimum wage.

The Committee was impressed by the extent to which customer tips contributed to the earnings of some hotel and restaurant employees in March 1970 (the date of the Labor Department survey). After reviewing the estimates in this report, the Committee was persuaded that the tip allowance could not be reduced at this time, but that the tipped employee should have stronger protection to ensure the fair operation of this provision. The Committee bill, in this respect, is consistent with the will of the Senate as expressed in an 89–1 vote in 1972.

Labor Department Regulations define a tip as follows (Part 531—Wage Payments under the Fair Labor Standards Act of 1938):

> A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for him. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally he has the right to determine who shall be the recipient of the gratuity.

Under these circumstances there is a serious legal question as to whether the employer should benefit from tips to the extent that

employees are paid less than the basic minimum wage because the employees are able to supplement their wages by special services which bring them tips.

Setting aside for the present the ethical question involved in crediting tips toward the minimum wage, the Committee is concerned by reports that inflation has been deflating tips.

In view of these reports the Committee intends that the Department of Labor should take every precaution to insure that the employee does in fact receive tips amounting to 50 percent of the applicable minimum wage before crediting that amount against the minimum wage.

The bill amends Section 3(m) by deleting the following language pertaining to the computation of tip credits: "except that in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of the tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence." The deletion of this language is to make clear the original intent of Congress to place on the employer the burden of proving the amount of tips received by tipped employees and the amount of tip credit, if any, which such employer is entitled to claim as to tipped employees. See *Bingham* v. *Airport Limousine Service*, 314 F. Supp. 565 (W. D. Ark. 1970) in which the court refused to "speculate" as to sums the employees might have received in tips when the employer failed to present "any objective information" on the subject.

The tip credit provision of S. 2747 is designed to insure employer responsibility for proper computation of the tip allowance and to make clear that the employer is responsible for informing the tipped employee of how such employee's wage is calculated. Thus, the bill specifically requires that the employer must explain the tip provision of the Act to the employee and that all tips received by such employee must be retained by the employee. This latter provision is added to make clear the original Congressional intent that an employer could not use the tips of a "tipped employee" to satisfy more than 50 percent of the Act's applicable minimum wage. H. Rept. 871, 89th Cong., 1st Sess., pp. 9–10, 17–18, 31; 111 Cong. Rec. 21829, 21830; 112 Cong. Rec. 11362–11365, 20478, 22649. See *Melton* v. *Round Table Restaurants, Inc.*, 20 WH Cases 532, 67 CCH Lab. Cas. 32,630 (N.D. Ga.).

The tip provision applies on an individual employee basis, and the employer may thus claim the tip credit for some employees even though the employer does not meet the requirements of this section with respect to other employees. Nor is the requirement that the tipped employee retain such employee's own tips intended to discourage the practice of pooling, splitting or sharing tips with employees who customarily and regularly receive tips—*e.g.*, waiters, bellhops, waitresses, countermen, busboys, service bartenders, etc. On the other hand, the employer will lose the benefit of this exception if tipped employees are required to share their tips with employees who do not customarily and regularly receive tips—*e.g.*, janitors, dishwashers, chefs, laundry room attendants, etc. In establishments where the employee performs a variety of different jobs, the employee's status as one who "customarily and regularly receives tips" will be determined on the basis of the employee's activities over the entire workweek.

Nursing homes

The Fair Labor Standards Act currently provides a partial overtime exemption for employees of nursing homes. The Act provides an overtime exemption for any employee of a nursing home who receives compensation for employment at time and one-half the regular rate of pay for all hours in excess of 48 in a week.

S. 2747 replaces the limited overtime exemption for employees of nursing homes (overtime compensation required for hours of employment in excess of 48 in a week) by an overtime exemption (initiated by an agreement between the employer and his employees) which substitutes a 14-consecutive-day work period for the workweek and requires overtime compensation for employment over 8 hours in any workday and for over 80 hours in such work period.

According to a 1969 report of the Department of Labor there had been a marked decline in average hours per week of nonsupervisory employees of nursing homes between April 1965 and October 1967. The report indicates that the application of a 48-hour workweek standard to nursing homes on February 1, 1967 had very little effect as only a small proportion of the workers worked over 48 hours a week even before the Act was extended to the industry. In April 1968, less than 15 percent of all nursing home employees worked over 44 hours in a week.

Salesmen, partsmen, and mechanics

S. 2747 provides an amendment under which: the overtime exemption for partsmen and mechanics in nonmanufacturing establishments primarily engaged in selling trailers is repealed; the overtime exemption for partsmen and mechanics in nonmanufacturing establishments engaged in selling aircraft is repealed; the overtime exemption for salesmen in automobile, trailer, truck sales and aircraft establishments is retained; the overtime exemption for salesmen, partsmen, and mechanics in farm implement sales establishments is retained; the exemption for partsmen and mechanics in automobile and truck sales establishments is retained and; an overtime exemption is provided for salesmen engaged in selling boats.

The Committee was persuaded that the application of an overtime standard to partsmen and mechanics in trailer dealerships, and to the presently exempt employees in aircraft dealerships would be likely to generate additional jobs, and to promote the training of workers to fill the job. If the industry continues to expand service hours, as recent trends indicate, the overtime penalty should provide considerable stimulus to the creation of new jobs at a time when our economy is experiencing high unemployment rates and the training necessary for meaningful employment in this industry is or should be readily available.

Cotton ginning and sugar processing

S. 2747 repeals the year-round overtime exemption for cotton ginning and sugar processing employees in Section 13(b)(15) of the Fair Labor Standards Act, but retains the exemption for employees engaged in processing maple sap into maple syrup or sugar.

The amendment to phase down the overtime exemption for cotton ginning and sugar processing employees is as follows:

1. Effective on the effective date, the workweek exemption is as follows: 72 hours each week for 6 weeks of the year; 64 hours each

week for 4 weeks of the year; 54 hours each week for 2 weeks of the year; 48 hours each week for the balance of the year.

2. In 1975, the workweek exemption is as follows: 66 hours each week for 6 weeks of the year; 60 hours each week for 4 weeks of the year; 50 hours each week for 2 weeks of the year; 46 hours each week for 2 weeks of the year; 44 hours each week for the balance of the year.

3. In 1976, the workweek exemption is as follows: 60 hours each week for 6 weeks of the year; 56 hours each week for 4 weeks of the year; 48 hours each week for 2 weeks of the year; 44 hours each week for 2 weeks of the year; 40 hours each week for the balance of the year.

The workweek exemptions are applicable during the actual season within a period of twelve consecutive months as opposed to the calendar year and are not limited to a period of consecutive weeks.

In addition, the cotton processing and sugar processing exemptions under section 7 of the law are retained but limited to 48 hours during the appropriate weeks. Furthermore, it is provided that an employer who receives an exemption under this subsection will not be eligible for other overtime exemptions under section 13(b)(24) or (25) or section 7.

The 1970 Report of the Department of Labor on the Agricultural Handling and Processing Industries includes the recommendation of the Secretary of Labor that "consideration should be given to the phasing out of the overtime exemptions currently available to the agricultural handling and processing industries under Section 7(c) and 7(d) of the Fair Labor Standrads Act . . . Although focusing primarily on Sections 7(c) and 7(d) of the Act, the survey data also indicate that there is no sound basis for the continuation of the year-round exemptions available under Sections 13(b) . . . (15) of the Act . . ."

Few industries are as highly subsidized and so greatly protected as the sugar industry. The Federal Government makes direct payments for sugar production totalling nearly $100 million a year. It sets and enforces production quotas in the U.S. and specifically restricts foreign imports of sugar for an additional benefit of about $400 million annually to the industry.

The industry is also protected by various Federal laws against crop damage resulting from natural causes.

Many of these employees work in shifts of 12 hours a day for six or seven days a week during the sugar processing season (October 15 to January 15). The law does not require that they be paid overtime premium pay although their counterparts in non-subsidized industries are paid time and one-half their regular rates of pay for all hours over 40 in a week.

Section 13(b)(15) of the Act also provides a year-round unlimited exemption from the maximum hours provisions for cotton ginning. Under section 13(b)(15) an employer is eligible for this exemption when: (1) employees are actually engaged in the ginning of cotton; (2) the cotton must be ginned "for market"; and (3) the place of employment is located in a county where cotton is grown in commercial quantities.

In addition, there is a limited overtime exemption under section 7(c) during the period or periods when cotton is being received for

ginning. When applicable, the exemption under sectioin 7(c) may be claimed for all employees, including office workers, exclusively engaged in the operations specified in the industry determination. A survey, conducted in 1967 by the U.S. Department of Agriculture, disclosed 3,753 cotton gins that employed 49,500 nonsupervisory employees during the peak work-week.

It is not uncommon in the cotton ginning industry to have employees working in excess of an 80 hour work-week during the peak season. Sixty-hour work-weeks exist with regular frequency. The exemption under 13(b)(15) enables employers to work their employees often nearly double the normal work-week, without having to pay premium wages. Modification of this exemption would start cotton ginning employees on the road to overtime pay parity with the mainstream of the American labor force.

In the past the industry has made little use of multiple shift operations with only one in four using more than one shift in 1970. Since the majority of the work force consists of "moonlighting" field workers, potential employees are in plentiful supply during the peak season. By using multi-shifts, cotton ginners could reduce the number of overtime hours, while at the same time alleviating the chronic farm unemployment problem (7.5% versus the national average of 4.9% in 1970).

Catering and food service employees

S. 2747 phases out the complete overtime exemption for employees of retail and service establishments who are employed primarily in connection with the preparation or offering of food or beverages either on the premises or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs.

S. 2747 requires that catering and food service employees be paid time and one half their regular rate of pay for hours over 48 per week on the effective date, for hours over 44 after 1 year, and for hours over 40 after the second year.

The elimination of the special exemption for food service employees in retail service establishments eliminates a disparity in work standards for employees of the same establishment. For example, food service employees in covered retail establishments are now exempt from the overtime provisions of the Act while retail clerks, in the same establishments, are covered by both the minimum wage and overtime standard. This has been a major source of friction.

It is expected that the gradual phasing out of the overtime exemption will eliminate excessively long hours in food service and catering activities and thus generate additional jobs. Also treatment of food service employees in this manner permits a similar phasing out of the overtime exemptions for bowling establishments, an exemption predicated in large part upon the food service aspects of such establishments.

Telegraphic message operations

S. 2747 repeals the minimum wage and phases out the overtime exemption for persons engaged in handling telegraph messages for the public under an agency or contract arrangement with a telegraph company, if they are so engaged in retail or service establishments exempt under section 13(a)(2) and if the revenues for such

messages are less than $500 a month. The amendment to phase out the overtime exemption is as follows:

1. 48 hours in the first year after the effective date.
2. 44 hours in the second year.
3. Repealed thereafter.

Bowling establishments

The Fair Labor Standards Act currently exempts from the overtime provisions of the Act any employee of a bowling establishment if such employee receives compensation for hours in excess of 48 in a workweek at time and one-half the employee's regular rate of pay.

The Committee bill would reduce the straight-time workweek to 44 hours one year after the effective date and to 40 hours one year later.

The Committee notes that bowling fees have advanced by 18 percent since 1967. At the same time, pinsetting machine technology has improved and automatic pinsetters have replaced hand pinsetters throughout the industry. Overtime coverage is easily compatible with the operative characteristics of the industry. The use of automatic pinsetters has eliminated problems which had previously resulted from daily hourly fluctuations in patronage.

House parents for orphans

S. 2747 provides a new overtime exemption for any employee who is employed with such employee's spouse by a private nonprofit educational institution to serve as the parents of children—

A. Who are orphans or one of whose natural parents is deceased, and

B. Who are enrolled in such institution and reside in residential facilities of the institution, which such children are in residence at such institution, if such employee and such employee's spouse reside in such facilities, receive without cost, board and lodging from such institution, and are together compensated, on a cash basis at an annual rate of not less than $10,000.

The Committee, in proposing this amendment, is primarily interested in insuring that couples who serve as house parents for orphans in educational institutions are assured sufficient flexibility in work standards to protect the interest of the orphans during the periods when such orphans reside in such institutions.

The Milton Hershey School in Hershey, Pennsylvania is one such institution. The Hershey school is a residential vocational school for orphan boys. The students live in 103 separate cottages of 10 to 15 boys each. The Committee has been informed that a married couple lives in each cottage, serving as house parents. The Committee felt that imposition of overtime coverage in this very special employment situation would result in an especially difficult financial and record-keeping situation for such institutions.

The Committee considered, but did not approve, a minimum wage as well as an overtime exemption for such employees. Thus these house parents will continue to be subject to the minimum wage provisions of the Act. An employee and such employee's spouse who serve as house parents of orphans in a nonprofit educational institution, who are paid not less than $10,000 a year in cash wages, and who receive without cost, board and lodging from such institutions would likely be paid in compliance with the minimum wage requirements of the Act.

The Committee recognizes that the Labor Department has issued special rules for calculating "hours worked" for employees residing on employer's premises, including such house parents who have duties which could occur at any time.

It is the Committee's understanding that as to hours worked by such resident employees, the Labor Department's regulations permit a reasonable agreement between the parties which takes into consideration all the pertinent facts surrounding such employment.

YOUTH AND FULL-TIME STUDENTS

The recent history of the Fair Labor Standards Act demonstrates a Congressional awareness of the special problems confronting students who need and want to work while attending school on a full-time basis. From 1938 to 1961 there was no special provision in the Fair Labor Standards Act relating to the employment of full-time students at subminimum rates. There were and there continues to be special provisions for employing learners, apprentices, student learners and student workers at subminimum rates.

The student-job problem did not come into focus until 1961 when the Fair Labor Standards Act was expanded to cover retail and service activities and again in 1966 when large industrial farms were brought within the scope of the Act. Unlike the activities which were covered by the Act prior to 1961, these newly covered employers had employed full-time students on a part-time basis outside of school hours prior to being brought under the FLSA, and steps were taken both by the Congress and the administrators of the statute to insure that such part-time jobs would still be available to students. The chronology of actions taken in this regard highlight the degree of flexibility which has continued to characterize this aspect of the statute.

The 1961 amendments to the Act revised Section 14 to permit the employment of students at 85 percent of the minimum wage in retail and service establishments. The purpose of this provision was described in House Report No. 75 (87th Congress, 1st Session, March 13, 1961) as follows:

> to provide employment opportunities for students who desire to work part-time outside of their school hours without displacement of adult workers.

In general, the maximum number of hours that could be paid for at subminimum rates was limited by past practice in employing students. An upper limit of 10 percent of all hours was established. An upper age limit of 18 was also established by the Labor Department regulations.

The 1966 amendments to the Act revised Section 14 with respect to full-time student employment in the retail and service industries and added a provision authorizing the employment of students in agriculture at subminimum rates.

The regulations for the hiring of students were relaxed so as to permit the issuance of student certificates to "students regardless of age (but in compliance with child labor laws)".

The 10 percent limitations on full-time student hours at subminimum wages was eliminated after the 1966 amendments. As a result, there are certificates, issued by the Department of Labor, which authorize the employment of full-time students at subminimum rates

for as many as 50 percent of all hours worked in some restaurants. In variety stores, authorizations of 35 percent student hours are not uncommon.

The Act currently permits the employment of full-time students on a part-time basis (not to exceed 20 hours a week) during school time or full-time during vacations and holidays in retail and service establishments and in agriculture at a wage rate not less than 85 percent of the applicable minimum wage. According to the Department of Labor almost 50 million hours were authorized for the employment of full-time students at subminimum rates by certificates in effect on June 20, 1972. An analysis of the use made of full-time student certificates was completed by the Department of Labor and included in Bulletin 1657—Youth Unemployment and Minimum Wages (1970). This analysis shows that only 42% of the man-hours authorized at 85% of the statutory minimum wage were used. Even more significantly, the analysis shows that one-fifth of the establishments holding certificates did not use them.

It is evident from employer responses as to their failure to use the certificates that many of them obtained them just in case they should want to use them. Obviously, they did not view the application for such certificates as a burden when they applied even when they had no immediate need.

Furthermore, the Department of Labor estimates that less than 2% of the applications for full-time student certificates were denied in fiscal 1973 either through outright denial or through the failure of the applicant to supply additional information required.

These provisions apply to full-time students, regardless of age, but "in compliance with child labor laws." The child labor proviso means that students must be at least 14 years of age to be employed in retail and service establishments. The Child Labor Amendments in this bill will create a minimum age restriction on the employment of full-time students below the age of 14 outside of school hours in agriculture. Sections 14(a)–(c) will permit the employment at less than the minimum wage as follows:

NUMBER OF CERTIFICATES GRANTED TO EMPLOY WORKERS AT RATES BELOW THE MINIMUM WAGE, UNDER SEC. 14 OF THE FAIR LABOR STANDARDS ACT, JUNE 21, 1972–JUNE 20, 1973, AND NUMBER OF CERTIFICATES AND ESTIMATED NUMBER OF WORKERS AUTHORIZED BY CERTIFICATES IN EFFECT ON JUNE 20, 1973

Type of certificate	Certificates granted June 21, 1972–June 20, 1973	Certificates in effect on June 20, 1973	
		Number of certificates	Estimated number of workers authorized
Total	42,471	17,065	107,724
Handicapped worker and trainee	15,653	13,050	13,050
Apprentice	402	NA	NA
Sheltered workshop	[1] 4,035	[1] 3,677	[2] 87,348
Student learner	17,677	NA	NA
Student worker	10	0	0
Learner	380	338	7,326
Full-time students	4,314	NA	NA

[1] The 4,035 certificates granted were held by 2,315 workshops and the 3,677 in effect on June 20, 1973, were held by 2,062 workshops.

[2] For regular program and work activities centers, estimate includes average employment for most recent fiscal year; for clients certified at rates below the shop rate and those engaged in training and evaluation certified by State agencies, estimate represents number of clients at time of application.

NA—Not available.

1. The Secretary of Labor, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, apprentices, and for messengers employed primarily in delivering letters and messages, under special certificates at such wages lower than the minimum wage applicable under section 6, and subject to such limitation as to time, number, proportion, and length of service as the Secretary shall prescribe.

2. A. Full time students may be employed in retail and service establishments, at rates not less than 85 percent of the applicable minimum wage, or $1.60, whichever is higher (or 85 percent of the section 6(c) rate in the case of employment in Puerto Rico or the Virgin Islands) for a period of up to 20 hours per week (full time during vacation periods). Up to 4 students may be hired without the need for traditional pre-certification procedure (that is, a finding of no substantial probability of job displacement before the issuance of certificates) or the need to meet the historical experience test concerning the proportion of student hours worked during a base year, as set forth below. If more than four students are hired, the existing pre-certification procedure will continue to apply and the proportion of student hours of employment (including for this purpose the first four students), to total hours of employment of all employees, shall not exceed such proportion for the corresponding twelve month period before the establishment was covered by the Act.

3. Full time students may be employed in agriculture at rates not less than 85 percent of the applicable minimum wage, or $1.30, whichever is higher (or 85 percent of the section 6(c) rate in the case of employment in Puerto Rico or the Virgin Islands) for a period of up to 20 hours per week (full time during vacation periods). For each student so employed, after the fourth, the Secretary of Labor must find that such employment will not reduce the full-time employment of non-students before issuing certificates.

4. Full time students may be employed in higher educational institutions, at rates not less than 85 percent of the applicable minimum wage, or $1.60, whichever is higher, for a period of up to 20 hours per week (full time during vacation periods).

The committee emphasizes that the Secretary is to look to the number of students employed by an employer at any one time and not in a cumulative sense, in determining which certification procedure applies and the applicability of the historical proportion of student employment pursuant to the provision.

The bill will also provide a minimum wage and overtime exemption for students employed by an elementary or secondary school if the employment constitutes an integral part of the school's regular education program provided that the employment satisfies applicable child labor provisions.

The Committee agrees with the views expressed by the Congress in 1961 and 1966 that opportunities for the employment of full-time students outside of school hours should be encouraged provided only that safeguards are continued to ensure against the substitution of students for other workers. The present certification program has proven itself a proper mechanism for this purpose and the Committee bill continues this procedure.

The Committee rejected a proposal that the FLSA be amended by loosening the special student certification program and adding a blanket subminimum wage for young people below the age of eighteen and for full-time students up to the age of 21. A similar proposal was rejected by the Senate in 1972 by a vote of 54–36.

The Committee's rejection of this special subminimum rate was based on the conviction that this would violate the basic objective of the Act and that such a standard would contribute to, rather than ease, the critical problem of unemployment because it would encourage the displacement of older workers.

The Committee was impressed by Secretary of Labor Brennan's views on a youth wage differential when he appeared at the hearing on his nomination.

> I believe in a realistic and adequate (minimum) wage. I am aware of the problem of youngsters, many of whom have to pay their way through school, but I am fearful if we have a difference of wages with the youngsters and their fathers in the area where minimum wage is so important, this could create problems.
>
> * * * * *
>
> If they are going to perform the same duties, the same responsibilities, I do not see why there should be any difference in the rate.

In the hearings on such proposals in 1971, former Secretary of Labor Hodgson said:

> I recognize that there may be some concern that a lower minimum wage for young people under age 18, for full-time students, and for young job-starters may reduce employment opportunities for older workers. *There may be some risk in marginal cases.* (Italics added.)

The Committee is aware that the minimum wage worker is typically regarded as a "marginal" worker. Therefore, the Secretary's 1971 statement was not reassuring.

The Committee was also unconvinced that an increase in the minimum wage rate would result in reducing youth employment.

Although certain economists who have studied the problem have concluded that an increase in the minimum wage rate would adversely affect teenage employment, others have criticized such studies on various grounds, including failure to take into acccount demographic changes in the population which have seen the relative number of teenagers greatly increase in recent years. Furthermore, the studies do not appear to take into account the expansions in coverage brought about by the 1961 and 1966 amendments. They are important not only in terms of numbers of workers covered but also in terms of kinds of activities covered—retail trades, services, educational institutions, hospitals, nursing homes, farms, etc. As far as young workers are concerned, these have always been more important in terms of jobs for young people than the traditional coverage areas of manufacturing, mining, wholesale trade, etc.

To fully understand the employment problems of youth, it is essential to recognize that the teenage unemployment rate has always been

higher than the national average for all workers. This is because teenagers are new jobseekers, who often seek only part-time jobs, preferably close to home. Out-of-school teenagers tend to have relatively high quit rates.

In the 1968 Manpower Report of the President a complete section was devoted to the problems of "Bridging the Gap from School to Work." This section raised more questions than it answered about teenage unemployment but it did pinpoint approaches which ought to be investigated if the teenage unemployment problem is to be solved. It stated:

> An examination is needed also of the extent to which initial job tryouts by youth reflect inefficiencies in the way they seek jobs and in the various institutions and agencies that help them, rather than "inevitable" dissatisfactions with particular job opportunities. To some extent, it is the present high family income levels in the United States, compared to those in other countries and in generations gone by, that permit many youth the luxury of "shopping around" and trying out jobs. Related to this question, of course, is the need for an assessment of the extent to which "disenchantment with work" plays a role in youth unemployment rates and for an examination of the particular groups in the population to whom this factor is applicable.
>
> Also needed is an examination of the extent to which youth unemployment rates could be reduced by spreading high school graduations over the year. At the present time 97 percent of high school graduates in the United States leave school within the same 2 or 3 weeks in June. The heavy load that this puts upon public and private employment offices and upon the personnel offices of companies might well be diminished, and greater inroads made into youth unemployment rates, if the load were spread throughout the year. There has been little realization or awareness of the extent to which the adjustment of high school schedules over the last few generations has resulted, more and more, in uniform graduation times and has perhaps contributed to the youth unemployment problem. There has been no exploration of the practical possibilities of reversing this process, nor of the extent to which such reversal might help in alleviating youth unemployment.

The youth wage proposal is put forth as a solution to the critical unemployment problem facing youths. The situation for the 16–17 year age group was deemed most "critical" by the proponents of a youth subminimum because their *unemployment rate* was highest. The situation for the 18–19 year age group was deemed to be only "slightly less critical" because their *unemployment rate* was somewhat lower.

First, it should be noted that unemployment rates do not indicate the *number* of persons seeking jobs and that comparisons of rates may be misleading unless these rates are related to the sizes of the groups being compared. In addition, the number of persons seeking full-time jobs is a more significant measure of serious unemployment than is the total number of unemployed. Unfortunately, a comparison of unemploy-

ment rates for various groups in the labor force does not indicate the relative seriousness of the problems confronting these groups.

In December 1973, there were 4,058,000 unemployed. Of these, 3,025,000 were looking for full-time work. In the 16–17 year old group there were 553,000 unemployed but only 148,000 were seeking full-time jobs. At the other end of the age spectrum 362,000 workers 55 years of age and older were unemployed and almost three-quarters percent of them or 269,000 were seeking full-time jobs. It does not make much sense to design a government policy which would move 16–17 year olds to the front of the hiring line by allowing employers to pay them substandard wages while placing older unemployed workers (55 years of age and older) at a competitive disadvantage even though they are more numerous and their problems of getting jobs once they become unemployed are far more serious in family and social terms.

Not only is it clear that a subminimum wage is not the solution to the teenage unemployment problem, there is considerable doubt as to whether the problem being discussed is teenage unemployment or discrimination in employment because of race.

A few figures will help to show that the color problem overshadows the age problem.

In 1971, there were more than 6 million employed teenagers aged 16 to 19. This was 2 million more than in 1961 and represented a 50 percent increase over the decade. Teenagers held almost 8% of all jobs in 1971 as compared with 6% in 1961. The single most important reason for the relatively high unemployment rate for teenagers is the dramatic 41% increase in the teenage population during the decade of the 60's.

As far as teenagers are concerned, the decade of the 70's should ease the problem. In contrast to a 41% population growth of teenagers in the 60's, a modest 12% is the outlook of the 70's.

Actually, the rate of teenage unemployment was substantially higher a decade ago. In 1963 the rate was 17.2% while in 1973 (just 5 months) the rate was 15%. Also, the teenage unemployment rate vis-a-vis the adult rate (20 and over) was better in 1972 than in any year since 1962.

While overall employment of teenagers was significantly higher in 1969 than in 1968 and continued to increase in 1970, 1971, and 1972 nonwhite teenagers lost jobs in both 1970 and 1971 and the modest increase in 1972 still left them substantially below the employment level of 1969. Between 1969 and 1971 there was a 12 percent increase in white teenage employment but a 7 percent drop in nonwhite teenage employment.

In 1973, the unemployment rate for nonwhite teenagers was 30.2%; for white teenagers, 12.6%. For nonwhite adults (20–24) the rate was 12.6%. As reflected in these figures color is more significant than age.

The committee was particularly struck by the fact that the unemployment rate in 1972 for nonwhite high school graduates (age 16 to 24) was 34.5% as compared with 23.7% for white high school dropouts.

Even these few figures convinced the committee that combining unemployment statistics for nonwhite and white teenagers and labelling the result a teenage problem, tended to disguise the real problem facing us today. And that is discrimination in employment because of color.

In rejecting the concept of a subminimum wage rate based on age, the committee was impressed by the findings in the Department of

Labor study "Youth Unemployment and Minimum Wages" Bulletin 1657. This report, prepared by the Department of Labor in 1970, is a comprehensive report on the relationship between minimum wages and youth unemployment. The report states that the various studies failed to establish any relationship between youth unemployment and the minimum wage. To quote some of the major findings in this report:

> In general, the most important factor explaining changes in teenage employment and unemployment has been general business conditions as measured by the adult unemployment rate.
>
> Not one of the local offices of the Employment Service (ES) cited the recent hike in the minimum wage or the extension of coverage under the Federal Fair Labor Standards Act as responsible for the change between June 1966 and June 1969 in the total number of nonfarm job openings available to teenagers, or which specified a minimum age of 16–19 years of age or 20 years old or over.
>
> In nearly all of the States covered by the study, differential minimum wage rates applicable to youth, including exemptions, appear to have little impact on the employment of youth in 1969.
>
> On the basis of our examination (with respect to foreign experience) however, it appears reasonable to conclude that wage differentials are less important factors than rapid economic growth, structural and technological shifts, national full employment, relatively low mobility rates, and the relative shortage of young workers. A similar confluence of these factors in the American economy might well have similar effects on youth employment regardless of the wage structure.

This same study provides information on the failure of employers who are now authorized to employ students at less than the minimum wage to make full use of this authorization. Only 42% of the hours authorized were actually used, which belies the argument that certificates are too difficult to obtain. A significant number of employers noted that teenagers were unwilling to work at less than the minimum wage. Many employers noted they were fully staffed. They indicated no interest in creating additional jobs at subminimum rates.

Furthermore, our experience following previous raises in the minimum wage rate does not show any connection between minimum wage levels and youth unemployment.

The Committee is impressed with the following statement on wages from the 1973 Report of a Special Task Force to the Secretary of Health, Education, and Welfare—*Work in America*. This Task Force Report was prepared at then Secretary Elliott L. Richardson's request:

> ... But in a culture in which wages constitute the major source of income for most workers, wages undoubtedly determine a portion of job satisfaction. Certainly, a level of wages that will support an adequate standard of living is of primary importance. Beyond that point, workers tend to measure their wages in terms of "equity"—i.e. in relationship to the contributions that their fellow workers are making to the enterprise, and the salaries they are receiving.

The Committee is convinced that establishing subminimum rates for any group of workers unrelated to the work they perform is discriminatory. The youth wage is rejected because discrimination in employment is wrong and the Committee wants no part in legislating discrimination.

NONDISCRIMINATION ON ACCOUNT OF AGE IN GOVERNMENT EMPLOYMENT

S. 2747 amends the Age Discrimination in Employment Act of 1967 to include within the scope of its coverage Federal, State, and local government employees (other than elected officials and certain aides not covered by civil service), and to expand coverage from employers with 25 or more employees to employers with 20 or more employees. The annual authorization of appropriations ceiling was raised from $3 million to $5 million. The Age Discrimination in Employment Act prohibits discrimination in employment on the basis of age in matters of hiring, job retention, compensation, and other terms, conditions, or privileges of employment. Protection under the Act is limited to individuals who are between the ages of 40 and 65. The Administration has also proposed such an extension of coverage for State and local government employees. The amendment is a logical extension of the Committee's decision to extend FLSA coverage to Federal, State, and local government employees. The Senate agreed to this extension by a vote of 86–0 in 1972.

The ADEA prohibits discrimination in employment on the basis of age in matters of hiring, job retention, compensation, and other terms, conditions or privileges of employment. Protection under the Act is limited to individuals who are between the ages of 40 and 65.

The Committee recognizes that the omission of government workers from the Age Discrimination in Employment Act did not represent a conscious decision by the Congress to limit the ADEA to employment in the private sector. It reflects the fact, that in 1967, when ADEA was enacted, most government employees were outside the scope of the FLSA and the Wage Hour and Public Contracts Divisions of the Department of Labor, which enforces the Fair Labor Standards Act, were assigned responsibility for enforcing the Age Discrimination in Employment Act.

As the President said in his message of March 23, 1972, supporting such an extension of coverage under the ADEA, "Discrimination based on age—what some people call 'age-ism'—can be as great an evil in our society as discrimination based on race or religion or any other characteristic which ignores a person's unique status as an individual and treats him or her as a member of some arbitrarily-defined group. Especially in the employment field, discrimination based on age is cruel and self-defeating; it destroys the spirit of those who want to work and it denies the Nation the contribution they could make if they were working."

The Committee was impressed by a press release issued by then Secretary of Labor Hodgson on February 4, 1972 which was headed: "Voluntary Compliance with Age Discrimination Laws Opens Up 1 Million Jobs, Secretary of Labor Tells Congress". The release states that informal talks with some 30,000 employers dispelled "preconceived notions or myths" about the older worker.

The Committee expects that expanded coverage under the Age Discrimination in Employment law will remove discriminatory barriers against employment of older workers in government jobs at the Federal and local government levels as it has and continues to do in private employment.

RECOVERY OF BACK WAGES

Section 26 of the Committee bill amends section 16(c) to authorize the Secretary of Labor not only to bring suit to recover unpaid minimum wages or overtime compensation, a right which the Secretary currently has, but also to sue for an equal amount of liquidated damages without requiring a written request from an employee. The addition of liquidated damages is a necessary penalty to assure compliance with the Fair Labor Standards Act. Currently, all that is required of the employer is the payment of wages that should have been paid in the first place, without any penalty for violating the Act. This is not a deterrent to future violations.

This section would also allow the Secretary of Labor to bring suit even though the suit might involve issues of law that have not been finally settled by the courts. At the present time, many of the protections that are written into the Act are not being extended to workers because of the current restrictions on the Secretary in bringing suits in areas that have not been finally settled by the courts. The Act places the primary responsibility for the enforcement of the Act on the Secretary of Labor; the Secretary should have the right to bring suits directly in order to resolve issues of law.

The Committee also acted on an amendment to Section 16(b) of the Act to make clear the right of individuals employed by state and local governments and political subdivisions to bring private actions to enforce their rights and recover back wages under this Act. This amendment is necessitated by the decision of the U.S. Supreme Court in *Missouri, et al.* (April, 1973) which held that Congress in extending coverage under the 1966 amendments to school and hospital employees in state and local governments did not explicitly provide the individual a right of action in the Federal courts although the Secretary of Labor was authorized to bring such suits. In addition the Committee included an amendment to the Portal to Portal Act of 1947 which would preserve existing actions brought by private individuals which would otherwise be barred by the statute of limitations as a result of the April decision.

Both amendments were included at the request and recommendation of the Administration and the Secretary of Labor.

ENFORCEMENT

The Committee is concerned that the Employment Standards Administration of the Department of Labor which now has responsibility for administering the Fair Labor Standards Act appears to be downgrading enforcement of this Act. The Committee wishes to reemphasize that it expects the Department to maintain a vigorous enforcement program under this Act; that coverage should be interpreted broadly; and that every effort should be made to insure that those employees who have been the victims of violations of this Act are made whole.

The Committee is aware that improving the Fair Labor Standards Act is a significant achievement only if it is followed by a vigorous enforcement effort designed to bring covered employers into compliance with the new standards as quickly as possible.

The Committee recognizes that enforcement funds are limited and that decisions must be made as to how best to allocate funds in order to maximize the effectiveness of the available funds in insuring that workers obtain the full benefits guaranteed them under the law.

As a first step, this involves informing employees and employers of their rights and responsibilities under the Act so as to reduce violations which grow out of ignorance and misunderstanding. Once having conducted an intensive informational campaign, however, the Committee recommends that full-scale investigations and action to recover back wages due are the only effective tools to bring about compliance with the FLSA.

The Committee is concerned that, with a law which has been on the books for 35 years and which has not been amended since 1966, underpayments are still running at about $100 million a year. The Committee is not unfamiliar with the fact that unscrupulous employers assume that there is a high probability that their violations will not be uncovered when only 3 percent of all covered establishments are investigated each year and that this attitude may help to explain the continued high level of violations. The Committee believes that the 7 percent decline in investigations between 1971 and 1972 and the Labor Department's announced shift in emphasis to more informational and conciliation efforts and away from investigations does not serve the purposes of the Act and severely cripples the national effort to "eliminate labor conditions detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency and general well being of workers."

The 1973 4(d) Report of the Department of Labor states:

> To assure that every covered worker enjoys the full protection of the Fair Labor Standards Act, the intensive educational and informational program to acquaint employees with their rights and employers with their responsibilities that was instituted several years ago continued in fiscal year 1972. Increased utilization of the CUE (Compliance Utilizing Education) program whereby grass roots efforts are made to acquaint businessmen with their obligations under the Act was promoted. This included speeches, seminars and training sessions with industry officials. Under this program, employers were encourage to review their operations, under (our) general guidance and assistance, to correct any practices that were not in compliance, including payment of any back wages found due, and to report the results of such activities. Many employers participated in varying degrees in this voluntary compliance program. In addition, the Employment Standards Administration participated in over 38,000 contacts with employers, employment agencies, labor organizations and others which, on the basis of the information and advice provided, resulted in changes in employment practices to achieve compliance. Also in 1972, over one million inquiries

and requests for information from the public (both employers and employees) about these laws were answered.

This approach to enforcement may be warranted for a limited time after the law is amended but it is difficult to understand why an intensive educational and informational campaign to inform employers of their responsibilities was substituted for field investigations when the basic provisions have not been changed since 1966.

The Committee is inclined to accept the view expressed in most of the reports of the Department of Labor to the Congress that full-scale investigations are essential if compliance is to be achieved.

For example, the 1947 Annual Report of the Department of Labor stated:

> Although every effort is made, as explained above, to reach employers through more comprehensive and less costly means, the Divisions have found that there is no substitute for a physical inspection as a means of relating the application of the acts to specific situations and insuring employers that they are operating in complete compliance and will not be liable for payment of back wages and liquidated damages as a result of employee suits. Inspections and adequate corrective actions in cases of serious violations found on inspection are the only ways of insuring compliance by the proportionately small but numerically large group of employers who do not accept the basic principles of the acts and will not comply with their provisions unless they are convinced that continued noncompliance may be costly. Reports of inspections are also the main source of information as to the many problems encountered by employers in attempting to comply with the acts. This policy of depending primarily on inspections as a means of obtaining compliance follows the well-tested practice of labor departments of the States and governmental agencies of other nations responsible for enforcing laws establishing minimum labor standards.

It is to be noted that information furnished to the Committee by the Department of Labor shows that violations of the FLSA are still widespread, and that an intensified program of inspections is fully warranted by the results achieved by the present enforcement program. Low-wage employees, who desperately need a decent wage to provide themselves and their families with the rudiments of life, are being cheated out of millions of dollars each year; and violations of child labor laws are so widespread as to constitute a national scandal. The Department of Labor must, of course, encourage voluntary compliance with the law and furnish technical assistance to employers who may not fully understand its complexities; but we have not yet reached the point where we can place primary reliance on these approaches; a vigorous and tough enforcement program for all provisions of the law with respect to wages and hours for all covered workers, child labor, equal pay, and employment of the handicapped, remains a necessity to guarantee that American workers receive the full protection that the FLSA is designed and intended to provide to them.

Of particular concern to the Committee, has been enforcement of the Fair Labor Standards Act with respect to the employment of handicapped individuals, and the protection of the rights of such individuals who are institutionalized. Under the Rehabilitation Act of 1973 (Public Law 93–102), the Committee ordered an original and full study into employment and wage practices in sheltered workshops and work activity centers; in addition, we have begun our own investigation into enforcement of FLSA in institutionalized settings.

The Committee points out that on December 7, 1973, the United States District Court for the District of Columbia in a class action involving enforcement of FLSA for patient workers in public and private non-Federal homes, hospitals and institutions ruled that the Department of Labor has a duty to implement enforcement efforts for such patient-workers and ordered the Department within 120 days to notify the institutions of their statutory responsibility to compensate all mentally ill and mentally retarded patient-workers, and to notify all such workers of their rights under the Act.

Furthermore, the Court ordered the Department to contact all institutions within one year to establish and implement the necessary procedures, including special certifications as provided under section 14 of FLSA, so that patient workers will be paid the wages due them. The Court's memorandum filed previously on November 14, 1973, stated that:

> Economic reality is the test of employment and the reality is that many of the patient-workers perform work for which they are in no way handicapped and from which the institution derives full economic benefit. So long as the institution derives any consequential economic benefit the economic reality test would indicate an employment relationship rather than mere therapeutic exercise. To hold otherwise would be to make therapy the sole justification for thousands of positions as dishwashers, kitchen helpers, messengers and the like.

Citing section 14 provisions providing for payment of less than the minimum wage for less productive handicapped workers by certification of the Secretary of Labor, and the fact that there is no specific exemption for patient-workers under the Act, the court found that mentally ill and mentally retarded patient-workers are covered by the Act. It went on to point out that time consuming and costly administrative resources to enforce the provisions for such a class of individuals was no excuse for failing to implement the statutory mandate.

The Committee agrees with the Court, and takes note of the enforcement procedures which the Department has been ordered to undertake. The Committee intends to follow the progress of the Labor Department in respect to these court ordered activities under FLSA, and if necessary it shall meet with the Department in the near future to oversee these activities.

Tabulation of Vote in Committee

Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, the following tabulation of votes in committee is provided.

1. Motion to report the bill, as amended, favorably (adopted 13–3).

YEAS

Mr. Williams	Mr. Mondale	Mr. Hathaway
Mr. Randolph	Mr. Eagleton	Mr. Javits
Mr. Pell	Mr. Cranston	Mr. Schweiker
Mr. Kennedy	Mr. Hughes	Mr. Stafford
Mr. Nelson		

NAYS

Mr. Dominick	Mr. Taft	Mr. Beall

Estimate of Costs

In accordance with the requirements of Section 252 of the Legislative Reorganization Act of 1970, the Committee estimates the cost of the legislation to be $5 million, for its administration, in each of the next five fiscal years.

No Government agency has submitted to the committee any cost estimate by which a comparison can be made with the committee estimate of the cost of this legislation. The estimate, however, is based upon the extension of employee coverage under the Fair Labor Standards Act which the bill provides, in relationship with the number of employees presently covered by the Act. That relationship is applied to the current cost of administering and enforcing the Act in determining the committee estimate.

SECTION-BY-SECTION ANALYSIS

Section 1

The name of this bill is the "Fair Labor Standards Amendments of 1974."

Section 2

This section amends section 6(a)(1) to establish, for employees in activities covered by the Act prior to the 1966 Amendments, an hourly minimum of not less than $2.00 during the first year from the effective date of the 1974 amendments, and not less than $2.20 thereafter.

Section 3

This section amends section 6(b) to establish, for nonagricultural employees newly covered by the 1966 amendments, by Title IX of the Education Amendments of 1972 and by the Fair Labor Standards Amendments of 1974 an hourly minimum of not less than $1.80 during the first year from the effective date of the 1974 amendments, $2.00 during the second year from the effective date of the 1974 amendments, and $2.20 thereafter.

Section 4

This section amends section 6(a)(5) to establish, for employees in agriculture, an hourly minimum of not less than $1.60 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1974, $1.80 during the second year from the effective date of the 1974 amendments, $2.00 during the third year from the effective date of the 1974 amendments, and $2.20 thereafter.

Section 5

Subsection 5(a) amends section 5 by adding a new subsection (e) to establish, for employees employed in Puerto Rico or the Virgin Islands (a) by the United States government or the government of the Virgin Islands, or (b) by a hotel, motel, or restaurant, or (c) by retail or service establishments employing such employees primarily in connection with the preparation or offering of food or beverages, a minimum wage rate determined in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this Act.

Subsection 5(b) amends subsection (c) of section 6 to require that the rate for employees in Puerto Rico and the Virgin Islands covered by a wage order rate in effect on the day before the effective date of the 1974 amendments which is under $1.40 an hour, be increased by $0.12 an hour; and if such rate is $1.40 or more an hour, such rate be increased by $0.15 an hour. Effective one year later and each subsequent year thereafter the wage order rate for other than commonwealth and municipal employees shall be increased by $0.12 an hour if under $1.40 an hour, and by $0.15 an hour if $1.40 or more an hour, until parity with the mainland is achieved. For agricultural employ-

ees covered by a wage order whose wage is increased by a subsidy (or income supplement) the increases prescribed by the 1974 Amendments shall be applied to the wage rate plus the amount of the subsidy (or income supplement). For newly covered employees under the 1974 amendments, a special industry committee shall recommend the highest minimum wage rates which shall not be less than 60 percent of the otherwise applicable rate under section 6(b) or $1.00 an hour whichever is greater. Effective dates of rates recommended by this special industry committee shall not be effective before sixty days after the effective date of the 1974 Amendments and shall be increased in the second and each subsequent year as provided in the 1974 Amendments. Wage rates of any employee in Puerto Rico or in the Virgin Islands shall not be less than 60 percent of the otherwise applicable rate or $1.00, whichever is higher, on the effective date of the wage increases. Wage order rate prescribed in the 1974 Amendments may be increased by a wage order issued pursuant to a special industry committee recommendation but not decreased.

Section 5(c)(1) amends section 8(b) by requiring that special industry committees to recommend the otherwise applicable rate under section (a) or 6(b) except where substantial documentary evidence, including pertinent financial data or other appropriate information establishes that the industry or portion thereof is unable to pay such wage rate. Minimum wage rates in wage orders may, upon review, be specified by a court of appeals.

Section 6

Section 6 amends section 3(d) and 3(e) to include under the definitions of "employer"and "employee" the United States and any State or political subdivision of a State or intergovernmental agency. This will extend minimum wage and overtime coverage of the law to civilian employees in agencies and activities of the United States (except the armed forces). Elected officials, personal staff, appointees on the policy making level, or immediate advisors in State and local governments are exempt. Coverage of State and local hospitals, nursing homes, schools, and local transit companies is provided under present law. A special overtime compensation provision is included in the 1974 Amendments for Federal, State and local government employees, in fire protection or law enforcement activities including security personnel in correctional institutions.

In the special overtime compensation provision for fire protection and law enforcement activity an agreement between the employer and the employee may be entered into to accept a work period of 28 consecutive days in lieu of a workweek of 7 consecutive days and overtime compensation to be paid for work performed in excess of 192 hours in such work period during the first year, 184 hours during the second year, 176 hours during the third year, 168 hours during the fourth year and 160 hours in such period thereafter. The United States Civil Service Commission is to administer the Act for Federal employees (other than Postal Service, Postal Rate Commission and Library of Congress employees).

Section 7

Section 7 amends section 2(a) to establish that persons in domestic service in households affect commerce and are therefore within the

coverage of the Act. Sections 6 and 7 are amended to establish, for domestic service workers earning wages qualified as such under the Social Security Act (requiring at least 50 in a calendar quarter for Social Security coverage), minimum wages at rates for employees newly covered by the 1974 Amendments and for overtime coverage, except that "live-in" domestic employees are included for minimum wage coverage but are excluded from overtime coverage. Casual baby-sitters or companions are exempt from both minimum wage and overtime coverage.

Section 8

Section 8 amends section 13(a)(2), the special dollar volume test for retail and service establishments, by phasing out the dollar volume establishment test from the present $250,000 to $225,000 on July 1, 1974, to $200,000 on July 1, 1975; and to repeal the test on July 1, 1976. This amendment would gradually expand the coverage of retail and service activities to include employees of all small establishments of chain store operations in which the total chain operation has gross annual sales of more than $250,000. This provision applies also to employees of establishments which are part of covered conglomerate operations.

Section 9

Section 9 amends section 7 and section 13 relating to tobacco employees. A limited overtime exemption (14 weeks, 10 hours per day, and 48 hours per week) is provided for certain employees engaged in activities related to the sale of tobacco. These employees are currently covered by the section 7(c) exemption pursuant to determination by the Secretary of Labor. Section 13 is amended to cover employees engaged in the processing of shade grown tobacco prior to the stemming process for use as cigar wrapper tobacco for minimum wages but not for overtime.

Section 10

This section repeals the minimum wage exemption and phases out the overtime exemption for persons engaged in handling telegraph messages for the public under an agency or contract arrangement with a telegraph company, if they are so engaged in retail or service establishments exempt under section 13(a)(2) and if the revenues for such messages are less than $500 a month, as follows: 48 hours in the first year beginning with the effective date of the 1974 Amendments, 44 hours in the second year; and repealed thereafter.

Section 11

This section amends section 13(b)(4) relating to fish and seafood processing employees, by phasing out the overtime exemption for such workers, as follows. 48 hours in the first year after the effective date of the 1974 Amendments; 44 hours in the second year; and repealed thereafter.

Section 12

This section amends section 13(b)(8) as it relates to nursing home employees by replacing the limited overtime exemption for employees of nursing homes (overtime compensation required for hours of employment in excess of 48 hours in a week) by the overtime exemption

applicable to hospitals. (By agreement, the employer and employee may substitute a 14-consecutive-day work period for the seven day workweek and requires overtime compensation for employment over 8 hours in any workday and for 80 hours in such 14 day work period.)

Section 13

This section amends section 13(b)(8) as it relates to hotel, motel, and restaurant employees by limiting the overtime exemption to hours in excess of 48 hours a week during the first year and to hours in excess of 46 hours a week thereafter. This section also amends section 13(b)(8) to phase out the overtime exemption for maids and custodial employees of hotels and motels as follows: 48 hours in the first year; 46 hours in the second year; 44 hours in the third year; repealed thereafter. The tip credit provision of section 3(m) of the FLSA is also amended to require the employer to inform each of such employer's tipped employees of this provision before the credit (up to 50% of the applicable minimum wage but not to exceed the value of tips actually received by the employee) is applied. In addition, this section further requires that all tips received by a tipped employee must be retained by such tipped employee.

Section 14

This section amends section 13(b)(10) relating to salesmen, partsmen, and mechanics by repealing the overtime exemption for partsmen and mechanics in nonmanufacturing establishments primarily engaged in selling trailers; by repealing the overtime exemption for partsmen and mechanics in nonmanufacturing establishments engaged in selling aircraft; and by providing an overtime exemption for salesmen engaged in the sale of boats.

Section 15

This section amends section 13(b)(18) by phasing out the overtime exemption for food service establishments employees as follows: 48 hours during the first year; 44 hours during the second year, repealed thereafter.

Section 16

This section amends section 13(b)(19) by phasing out the overtime exemption for employees of bowling establishments in two steps; reducing the exemption from 48 to 44 hours effective one year after the effective date of the 1974 amendments and repealing the exemption two years after the effective date of the 1974 Amendments.

Section 17

This section amends section 13(b) by providing an overtime exemption for couples who serve as house-parents for orphaned children or children with one parent deceased placed in nonprofit educational institutions if the couple resides on the premises, receives their board and lodging without cost and are together paid on a cash basis not less than $10,000 a year.

Section 18

This section amends section 13(a)(2) by providing that the minimum wage exemptions of section 13(a)(2) for certain retail and service establishments, and of 13(a)(6) relating to agricultural employees, would not be applicable to establishments which are part of

conglomerates having a combined annual gross volume of sales exceeding $10,000,000.

Section 19

This section amends sections 7(c) and 7(d) by phasing out the limited overtime exemption for employees of industries found to be of a seasonable nature or characterized by marked annual recurring seasonal peaks of operation (other than for cotton or sugar processing), as follows: on the effective date, the seasonal periods for exemptions are reduced from 10 weeks to 7 weeks, and from 14 weeks to 10 weeks; on the same date, the workweek exemptions are reduced from 50 hours to 48 hours; effective January 1, 1975, the seasonal periods for exemptions are reduced from 7 weeks to 5 weeks, and from 10 weeks to 7 weeks; effective January 1, 1976, the seasonal periods for exemption are reduced from 5 weeks to 3 weeks, and from 7 weeks to 5 weeks; effective December 31, 1976, the overtime exemptions (sections 7(c) and 7(d)) are repealed.

Section 20

This section amends section 13(b) by phasing down the overtime exemption for cotton ginning and sugar processing employees, as follows: Effective on the effective date, 72 hours each week for 6 weeks of the year; 64 hours each week for 4 weeks of the year; 54 hours each week for 2 weeks of the year; 48 hours each week for the balance of the year. Effective January 1, 1975, 66 hours each week for 6 weeks of the year; 60 hours each week for 4 weeks of the year; 50 hours each week for 2 weeks of the year; 46 hours each week for 2 weeks of the year; 44 hours each week for the balance of the year. Effective January 1, 1976, 60 hours each week for 6 weeks of the year; 56 hours each week for 4 weeks of the year; 48 hours each week for 2 weeks of the year; 44 hours each week for 2 weeks of the year; 40 hours each week for the balance of the year.

Section 21

This section amends sections 7 and 13(b)(7) by phasing out the overtime exemption for all local transit operating employees, as follows: 48 hours on the effective date of the 1974 Amendments; 44 hours one year later, and repealed effective two years after the effective date of the 1974 Amendments.

Section 22

This section amends section 13 by adding a subsection (h) which provides a limited overtime exemption for a period not more than 14 workweeks in the aggregate in any calendar year for cotton or sugar service employees if the employees received overtime compensation for work in excess of 10 hours in any workweek. Employers receiving an exemption under this subsection shall not be eligible for any other exemption of this section and section 7.

Section 23

Section 23 amends section 13 as it relates to motion picture theater employees, employees in forestry and lumbering, and pipeline employees, as follows:

1. Repeals section 13(a)(9) and amends section 13(b) thereby repealing the minimum wage exemption, but retaining the overtime exemption for employees in motion picture theaters.

2. Repeals section 13(a)(13) and amends section 13(b) thereby repealing the minimum wage exemption but retaining the overtime exemption for forestry and lumbering operations with 8 or fewer employees.

3. Amends section 13(b)(2) to repeal the overtime exemption for employees of oil pipeline transportation companies.

Section 24

Section 24 amends section 14 by substituting for subsection (a), (b), and (c) subsections which will permit the employment at less than the minimum wage of (1) Learners, apprentices, and messengers delivering primarily letters and messages, under special certificates issued under regulations or orders of the Secretary of Labor, at such wages lower than the applicable minimum, and subject to limitations as to time, number, proportion and length of service as the Secretary shall prescribe. The Secretary of Labor shall provide for such employment to the extent necessary to present curtailment of opportunity for employment.

(2) Full time students may be employed in retail and service establishments, at rates not less than 85 percent of the applicable minimum wage, or $1.60, whichever is higher (or 85 percent of the section 6(c) rate in the case of employment in Puerto Rico or the Virgin Islands) for a period of up to 20 hours per week (full time during vacation periods). Up to 4 students may be hired without the need for traditional pre-certification procedure (that is, a finding of no substantial probability of job displacement before the issuance of certificates) or the need to meet the historical experience test concerning the proportion of student hours worked during a base year, as set forth below. If more than four students are hired, the existing pre-certification procedure will continue to apply and the proportion of student hours of employment (including for this purpose the first four students), to total hours of employment of all employees, shall not exceed such proportion for the corresponding twelve month period before the establishment was covered by the Act.

(*b*) Full time students may be employed in agriculture at rates not less than 85 percent of the applicable minimum wage, or $1.30, whichever is higher (or 85 percent of the section 6(c) rate in the case of employment in Puerto Rico or the Virgin Islands) for a period of up to 20 hours per week (full time during vacation periods). For each student so employed, after the fourth, the Secretary of Labor must find that such employment will not reduce the full-time employment of non-students before issuing certificates.

(*c*) Full time students may be employed in higher educational institutions, at rates not less than 85 percent of the applicable minimum wage, or $1.60, whichever is higher, for a period of up to 20 hours per week (full time during vacation periods).

(3) This section also amends Section 14 by adding a new subsection providing a minimum wage and overtime exemption for students employed by an elementary and secondary school if the employment constitutes an integral part of the school's regular education program and such employment satisfies applicable child labor provisions.

(4) This section also amends section 4(d) by including in the annual report of the Secretary of Labor to Congress, a summary of the special certificates issued under section 14(b).

Section 25

This section amends section 12 (relating to child labor) by adding a new subsection (d) requiring employers to obtain proof of age from any employee. This section also amends section 13(c)(1) relating to child labor in agriculture by permitting the employment of a child under age 12 in agriculture only if such child is employed outside of school hours for the school district where such employee is living by his or her parent or a person standing in place of his or her parent, on a farm owned or operated by his or her parent or such person, or is employed on a farm not covered by the Act under the 500 man-day test, with the consent of his or her parent or such person. A child 12 or 13 years of age is permitted to be employed on a farm outside of school hours for the school district in which he or she resides, if such employment is with the consent of his or her parents or person standing in place of his or her parents, or his or her parent or such person is employed in the same farm, or if such employee is 14 years of age or older.

This section also amends section 16 by adding a new subsection subjecting violators of child labor provisions or regulations to a civil penalty not to exceed $1000 for each violation.

Section 26

This section amends section 16(c) to continue the authority to the Secretary of Labor to sue for back wages and adds a provision to also permit the Secretary sue for an equal amount of liquidated damages without requiring a written request from the employee and even though the suit might involve issues of law not finally settled by the courts. In the event the Secretary brings such an action, the right of an employee provided by section 16(b) to bring an action in his or her own behalf, or to become a party to such an action would terminate, unless such action is dismissed without prejudice, on motion by the Secretary.

Section 27

This section amends section 4(d) by including overtime coverage along with minimum wages established by the Act in the Secretary of Labor's Annual Report to Congress due in January. This section also adds a new subsection 4(d)(2) requiring the Secretary of Labor to conduct studies on the justification or lack thereof for each special exemption set forth in section 13 of the Act, and the extent to which such exemptions apply to employees of conglomerates and the economic effects of the application of such exemptions to such employees. A report shall be submitted to Congress on these latter studies not later than January 1, 1976.

Section 28

This section amends section 11(b) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630(b)) by expanding its coverage from employers' with 25 or more employees to employers with 20 or more employees. This section also amends section 11(b) of the Age

Discrimination in Employment Act to include within its scope coverage for State, and local government employees (other than elected officials and certain aides not covered by Civil Service). The annual authorization of appropriations ceilings is raised from $3 million to $5 million. A new section (Sec. 15) is also added to the Act prohibiting discrimination on account of age in Federal government employment with jurisdiction for enforcement assigned to the United States Civil Service Commission. Aggrieved persons may bring a civil action in any Federal district court of competent jurisdictions.

Section 29

This section sets the effective date of the Act, except as otherwise specifically provided, as the first day of the first full month which begins after the date of enactment.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FAIR LABOR STANDARDS ACT OF 1938

AN ACT, To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Act of 1938."

FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. *The Congress further finds that the employment of persons in domestic service in households affects commerce.*

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employments or earning power.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representatives, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

[(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political Subdivision of a State (except with respect to employees of a State or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in the last sentence of subsection (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence), or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.]

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

[(e) "Employee" includes any individual employed by an employer,

[(1) any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family, or

[(2) any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been employed in agriculture less than thirteen weeks during the preceding calendar year.]

(e) (1) Except as provided in paragraphs (2) and (3), the term "employee" means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

(i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

(v) in the Library of Congress;

(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level, or

(IV) who is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office.

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

[(h) "Industry" means a trade, business, industry, or branch thereof, or group of industries, in which individuals are gainfully employed.]

(h) "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of

sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Secretary of Labor, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the [employer] *employer*, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that [in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount.] *the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this section, and (2) all tips received by such employee have been retained by the employee, except that nothing herein shall prohibit the pooling of tips among employees who customarily and regularly receive tips.*

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry.

(o) Hours worked.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor: *Provided*, That, within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (1) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (2) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (3) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments. For purposes of this subsection, the activities performed by any person or persons—

(1) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit), or

(2) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), *or*

(3) in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

[(s) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person, and which—]

(s) *"Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and which—*

(1) during the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gasoline service establishment whose annual gross volume of sales is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated);

(2) is engaged in laundering, cleaning, or repairing clothing or fabrics;

(3) is engaged in the business of construction or reconstruction, or both; [or]

(4) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for [profit).] *profit), or*

(5) is an activity of a public agency.

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection. *The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.*

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips.

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and

Postal Rate Commission), a State, or a political subdivision of a State, or any interstate governmental agency.

ADMINISTRATION

SEC. 4. (a) There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this Act referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $26,000 a year.[1]

(b) The Secretary of Labor may, subject to the civil service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the Classification Act of 1949, as amended. The Secretary may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Secretary in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Secretary, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the Secretary shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d) (*1*) The Secretary shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act, as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages *and overtime coverage* established by this Act, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent. *Such report shall also include a summary of the special certificates issued under section 14(b).*

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 13 of this Act, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the

[1] *Excerpts From Reorganization Plan No. 6 of 1950, 64 Stat. 1263.*
"Except as otherwise provided [with respect to hearing examiners], there are hereby transferred to the Secretary of Labor all functions of all other officers of the Department of Labor and all functions of all agencies and employees of such Department * * *. The Secretary of Labor may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee of the Department of Labor of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan."

economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

(e) Whenever the Secretary has reason to believe that in any industry under this Act the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress; *Provided*, That he may also include in such report information on the increased employment resulting from additional exports in any industry under this Act as he may determine to be pertinent to such report.

(f) The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to any individual employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this Act with respect to such individuals. Notwithstanding any other provision of this Act, or any other law, the Civil Service Commission is authorized to administer the provisions of this Act with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service or Postal Rate Commission). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 16(b) of this Act.

SPECIAL INDUSTRY COMMITTEES FOR PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 5. (a) The Secretary of Labor shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce, or the Secretary may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees shall be subject to the provisions of section 8.

(b) An industry committee shall be appointed by the Secretary without regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one

of whom the Secretary shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Secretary shall give due regard to the geographical regions in which the industry is carried on.

(c) Two-thirds of the members of an industry committee shall constitute a quorum, and the decision of the committee shall require a vote of not less than a majority of all its members. Members of an industry committee shall receive as compensation, for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for each day actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and other expenses. The Secretary shall furnish the committee with adequate legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(d) The Secretary shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or call upon the Secretary to furnish additional information to aid it in its deliberations.

(e) The provisions of this section, section 6(c), and section 8 shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands, (2) by an establishment which is a hotel, motel, or restaurant, or (3) by any other retail or service establishment which employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs. The minimum wage rate of such an employee shall be determined under this Act in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this Act. As used in the preceding sentence, the term "State" does not include a territory or possession of the United States.

MINIMUM WAGES

SEC. 6. (a) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) not less than [$1.40] *$2.00* an hour during the first year from the effective date of the Fair Labor Standards Amendments of [1966] *1974* and not less than [$1.60] *$2.20* an hour thereafter, except as otherwise provided in this section;

(2) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the appli-

cable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Secretary of Labor, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;

(3) if such employee is employed in American Samoa, in lieu of the rate or rates provided by this subsection or subsection (b), not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint in the same manner and pursuant to the same provisions as are applicable to the special industry committees provided for Puerto Rico and the Virgin Islands by this Act as amended from time to time. Each such committee shall have the same powers and duties and shall apply the same standards with respect to the application of the provisions of this Act to employees employed in American Samoa as pertain to special industry committees established under section 5 with respect to employees employed in Puerto Rico or the Virgin Islands. The minimum wage rate thus established shall not exceed the rate prescribed in paragraph (1) of this subsection;

(4) if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

[(5) if such employee is employed in agriculture, not less than $1 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1966, not less than $1.15 an hour during the second year from such date, and not less than $1.30 an hour thereafter.]

(5) if such employee is employed in agriculture, not less than—

(A) $1.60 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1974.

(B) $1.80 an hour during the second year from the effective date of such amendments,

(C) $2 an hour during the third year from the effective date of such amendments,

(D) $2.20 an hour thereafter.

(b) Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this Act by the Fair Labor Standards Amendments of 1966, *title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974*, wages at the following rates:

[(1) not less than $1 an hour during the first year from the effective date of such amendments,

[(2) not less than $1.15 an hour during the second year from such date,

[(3) not less than $1.30 an hour during the third year from such date,

[(4) not less than $1.45 an hour during the fourth year from such date, and

[(5) not less than $1.60 an hour thereafter.]

(1) not less than $1.80 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1974,

(2) not less than $2.00 an hour during the second year from the effective date of such amendments,

(3) not less than $2.20 an hour thereafter.

(c)(1) The rate or rates provided by subsections (a) and (b) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5.

[(2) In the case of any such employee who is covered by such a wage order to whom the rate or rates prescribed by subsection (a) would otherwise apply, the following rates shall apply:

[(A) The rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1966, increased by 12 per centum, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under paragraph (C). Such rate or rates shall become effective sixty days after the effective date of the Fair Labor Standards Amendments of 1966 or one year from the effective date of the most recent wage order applicable to such employee theretofore issued by the Secretary pursuant to the recommendations of a special industry committee appointed under section 5, whichever is later.

[(B) Beginning one year after the applicable effective date under paragraph (A), not less than the rate or rates prescribed by paragraph (A), increased by an amount equal to 16 per centum of the rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1966, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee under paragraph (C).

[(C) Any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands, may apply to the Secretary in writing for the appointment of a review committee to recommend the minimum rate or rates to be paid such employees in lieu of the rate or rates provided by paragraph (A) or (B). Any such application with respect to any rate or rates provided for under paragraph (A) shall be filed within sixty days following the enactment of the Fair Labor Standards Amendments of 1966 and any such application with respect to any rate or rates provided for under paragraph (B) shall be filed not more than one hundred and twenty days and not less than sixty days prior to the effective date of the applicable rate or rates under paragraph (B). The Secretary shall promptly consider such application and may appoint a review committee if he has reasonable cause to believe, on the basis of financial and other information contained in the application, that compliance with any applicable rate or rates prescribed by paragraph (A) or (B) will substantially curtail employment in such industry. The Secretary's decision upon any such application shall be final. Any wage order issued pursuant to the recommendations of a review committee appointed under this paragraph shall take effect on the applicable effective date provided in paragraph (A) or (B).

[(D) In the event a wage order has not been issued pursuant to the recommendation of a review committee prior to the applicable effective date under paragraph (A) or (B), the applicable percentage increase provided by any such paragraph shall take effect on the effective date prescribed therein, except with respect to the employees of an employer who filed an application under paragraph (C) and who files with the Secretary an undertaking with a surety or sureties satisfactory to the Secretary for payment to his employees of an amount sufficient to compensate such employees for the difference between the wages they actually receive and the wages to which they are entitled under this subsection. The Secretary shall be empowered to enforce such undertaking and any sums recovered by him shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sum not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts.

[(3) In the case of any such employee to whom subsection (a)(5) or subsection (b) would otherwise apply, the Secretary shall within sixty days after the effective date of the Fair Labor Standards Amendments of 1966 appoint a special industry committee in accordance with section 5 to recommend the highest minimum wage rate or rates in accordance with the standards prescribed by section 8, but not in excess of the applicable rate provided by subsection (a)(5) or subsection (b), to be applicable to such employee in lieu of the rate or rates prescribed by subsection (a)(5) or subsection (b), as the case may be. The rate or rates recommended by the special industry committee shall be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation but not before

sixty days after the effective date of the Fair Labor Standards Amendments of 1966.

[(4) The provisions of section 5 and section 8, relating to special industry committees, shall be applicable to review committees appointed under this subsection. The appointment of a review committee shall be in addition to and not in lieu of any special industry committee required to be appointed pursuant to the provisions of subsection (a) of section 8, except that no special industry committee shall hold any hearing within one year after a minimum wage rate or rates for such industry shall have been recommended to the Secretary by a review committee to be paid in lieu of the rate or rates provided for under paragraph (A) or (B). The minimum wage rate or rates prescribed by this subsection shall be in effect only for so long as and insofar as such minimum wage rate or rates have not been superseded by a wage order fixing a higher minimum wage rate or rates (but not in excess of the applicable rate prescribed in subsection (a) or subsection (b)) hereafter issued by the Secretary pursuant to the recommendation of a special industry committee.]

(2) Except as provided in paragraphs (4) and (5), in the case of any employee who is covered by such a wage order on the date of enactment of the Fair Labor Standards Amendments of 1974 and to whom the rate or rates prescribed by subsection (a) or (b) would otherwise apply, the wage rate applicable to such employee shall be increased as follows:

(A) Effective on the effective date of the Fair Labor Standards Amendments of 1974, the wage order rate applicable to such employee on the day before such date shall—

(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour,

(B) Effective on the first day of the second and each subsequent year after such date, the highest wage order rate applicable to such employees on the day before such first day shall—

(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour.

In the case of any employee employed in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5, to whom the rate or rates prescribed by subsection (a) (5) would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the increases prescribed by this paragraph shall be applied to the sum of the wage rate in effect under such wage order and the amount by which the employee's hourly wage rate is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order.

(3) In the case of any employee employed in Puerto Rico or the Virgin Islands to whom this section is made applicable by the amend-

ments made to this Act by the Fair Labor Standards Amendments of 1974, the Secretary shall, as soon as practicable after the date of enactment of the Fair Labor Standards Amendments of 1974, appoint a special industry committee in accordance with section 5 to recommend the highest minimum wage rate or rates, which shall be not less than 60 per centum of the otherwise applicable minimum wage rate in effect under subsection (b) or $1.90 an hour, whichever is greater, to be applicable to such employee in lieu of the rate or rates prescribed by subsection (b). The rate recommended by the special industry committee shall (A) be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation, but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1974, and (B) except in the case of employees of the government of Puerto Rico or any politicial subdivison thereof, be increased in accordance with paragraph (2)(B).

(4)(A) Notwithstanding paragraph (2)(A) or (3), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(A) or (3) of this subsection, shall, on the effective date of the wage increase under paragraph (2)(A) or of the wage rate recommended under paragraph (3), as the case may be, be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) or $1.00, whichever is higher.

(B) Notwithstanding paragraph (2)(B), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(B), shall, on and after the effective date of the first wage increase under paragraph (2)(B), be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) or $1.00, whichever is higher.

(5) If the wage rate of an employee is to be increased under this subsection to a wage rate which equals or is greater than the wage rate under subsection (a) or (b) which, but for paragraph (1) of this subsection, would be applicable to such employee, this subsection shall be inapplicable to such employee and the applicable rate under such subsection shall apply to such employee.

(6) Each minimum wage rate prescribed by or under paragraph (2) or (3) shall be in effect unless such minimum wage rate has been superseded by a wage order (issued by the Secretary pursuant to the recommendation of a special industry committee convened under section 8) fixing a higher minimum wage rate.

(d)(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this Act.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e) (1) Notwithstanding the provisions of section 13 of this Act ,except subsections (a) (1) and (f) thereof), every employer providing any contract services (other than linen supply services) under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 (41 U.S.C. 351–357) or to whom subsection (a) (1) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.

(2) Notwithstanding the provisions of section 13 of this Act (except subsections (a) (1) and (f) thereof) and the provisions of the Service Contract Act of 1965, every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b), except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a) (1) of this section.

(f) Anyemployee who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under subsection 6(b) unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act constitute "wages," for purposes of title II of such Act.

MAXIMUM HOURS

SEC. 7. (a) (1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for

commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this Act by the Fair Labor Standards Amendments of 1966—

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks, or

(2) in pursuant of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum work-week applicable to such employee under subsection (a) or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

(3) by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

(A) the annual gross volume of sales of such enterprise is less than $1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale,

and such employee receives compensation for employment in ex-

cess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 6,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c) For a period or periods of not more than [ten] *seven* workweeks in the aggregate in any calendar year, or [fourteen] *ten* workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (d) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection if such employee (1) is employed by such employer in an industry found by the Secretary to be of a seasonal nature, and (2) receives compensation for employment by such employer in excess of ten hours in any workday, or for employment by such employer in excess of [fifty] *forty-eight* hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.[1]

(d) For a period or periods of not more than [ten] *seven* workweeks in the aggregate in any calendar year, or [*fourteen*] ten workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (c) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer in an enterprise which is in an industry found by the Secretary—

(A) to be characterized by marked annually recurring seasonal peaks of operation at the places of first marketing or first processing of agricultural or horticultural commodities from farms if such industry is engaged in the handling, packing, preparing, storing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, or

(B) to be of a seasonal nature and engaged in the handling, packing, storing, preparing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, and

(2) receives compensation for employment by such employer in excess of ten hours in any workday, or for employment in excess of forty-eight hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.[1]

---

[1] Effective January 1, 1975, Sec. 7 (c) and (d) are each amended—
(1) by striking out "seven workweeks" and inserting in lieu thereof "five workweeks", and
(2) by striking out "ten workweeks" and inserting in lieu thereof "seven workweeks".
Effective January 1, 1976, Sec. 7(c) and 7(d) are each amended—
(1) by striking out "five workweeks" and inserting in lieu thereof "three workweeks", and
(2) by striking out "seven workweeks" and inserting in lieu thereof "five workweeks".
Effective December 31, 1976, sections 7(c) and 7(d) are repealed.

(e) As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor set forth in appropriate regulation which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined witout regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in non-overtime hours on other days; or

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic,

normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a)), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek.

(f) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay not less than the minimum hourly rate provided in subsection (a) or (b) of section 6 (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek and (2) provides a weekly guaranty of pay for more than sixty hours based on the rates so specified.

(g) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess for the maximum workweek applicable to such employee under such subsection—

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during no overtime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Secretary of Labor as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e), shall be creditable toward overtime compensation payable pursuant to this section.

(i) No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) No employer engaged in the operation of a hospital *or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises* shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(k) No public agency shall be deemed to have violated subsection (a) with regard to any employee engaged in fire protection or law enforcement activities (including security personnel in correctional institutions) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of twenty-eight consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed for his employment in excess of—

(1) one hundred and ninety-two hours in each such twenty-eight day period during the first year from the effective date of the Fair Labor Standards Amendments of 1974;

(2) one hundred and eighty-four hours in each such twenty-eight day period during the second year from such date;

(3) one hundred and seventy-six hours in each such twenty-eight day period during the third year from such date;

(4) one hundred and sixty-eight hours in each such twenty-eight day period during the fourth year from such date; and

(5) one hundred and sixty hours in each such twenty-eight day period thereafter.

(l) Subsection (a)(1) shall apply with respect to any employee who in any workweek is employed in domestic service in a household unless such employee's compensation for such work would not because of section 209(g) of the Social Security Act constitute "wages", for purposes of title II of such Act.

(m) For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a)

without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer—

(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek.

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsecetion shall not be eligible for any other exemption under this section.

(n) In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employeee's regular employment.

WAGE ORDERS IN PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 8. (a) The policy of this Act with respect to industries or enterprises in Puerto Rico and the Virgin Islands engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment, the objective of [the minimum wage prescribed in paragraph (1) of section 6(a) in each such industry.] *the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 6(a) but for section 6(c).* The Secretary of Labor shall convene an industry committee or committees, appointed pursuant to section 5, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of

goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce in any such industry or classifications therein. Minimum rates of wages established in accordance with this section which are not equal to [the minimum wage rate prescribed in paragraph (1) of section 6(a)] *the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 6(a)* shall be reviewed by such a committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

(b) Upon the convening of any such industry committee, the Secretary shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Secretary the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin [Islands.] *Islands; except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 6(a) or 6(b), which would be applicable but for section 6(c), unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage.*

(c) The industry committee shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of that [prescribed in paragraph (1) of section 6(a))] *in effect under paragraph (1) or (5) of section 6(a) (as the case may be))* which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of life or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) The industry committee shall file with the Secretary a report containing its findings of fact and recommendations with respect to the matters referred to it. Upon the filing of such reports, the Secretary shall publish such recommendations in the Federal Register and shall provide by order that the recommendations contained in such report shall take effect upon the expiration of 15 days after the date of such publication.

(e) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Secretary finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein.

(f) Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by other means as the Secretary deems reasonably calculated to give general notice to interested persons.

ATTENDANCE OF WITNESSES

SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C., 1934 edition, title 15, secs. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor and the industry committees.

COURT REVIEW

SEC. 10. (a) Any person aggrieved by an order of the Secretary issued under section 8 may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify (*including provision for the payment of an appropriate minimum wage rate*), or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been

urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding; and that there were reasonable grounds for failure to adduce such evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

INVESTIGATIONS, INSPECTIONS, RECORDS, AND HOMEWORK REGULATIONS

SEC. 11. (a) The Secretary of Labor or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industrial subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in section 12 and in subsection (b) of this section, the Secretary shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 12, the Secretary shall bring all actions under section 17 to restrain violations of this Act.

(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the Secretary of Labor may, for the purpose of carrying out his functions and duties under this Act, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of this Act of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him,

and shall preserve such records for such periods of time, and shall make such reports therefrom to the Secretary as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder.

(d) The Secretary is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act, and all existing regulations or orders of the Administrator relating to industrial homework are hereby continued in full force and effect.

CHILD LABOR PROVISIONS

SEC. 12. (a) No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed. *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection. *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

(b) The Secretary of Labor, or any of his authorized representatives, shall make all investigations and inspections under section 11(a) with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 17 to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this Act relating to oppressive child labor.

(c) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.

(d) In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.

EXEMPTIONS

SEC. 13. (a) The provisions of sections 6 (except sections 6(d) in the case of paragraph (1) of this subsection) and 7 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an

employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted in such activities) Act; or

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4)), if more than 50 percentum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s) or such establishment has an annual dollar volume of sales which is less than [$250,000] *$225,000* (exclusive of excise taxes at the retail level which are separately stated). A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or service (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or [1]

(3) any employee employed by an establishment which is an amusement of recreational establishment, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33⅓ per centum of its average receipts for the other six months of such year; or

(4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: *Provided*, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-hour days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his em-

[1] *Note: The above change in section 13(a)(2) is effective July 1, 1974, note also that—*
Effective July 1, 1975, such section is amended by striking out "$225,000" and inserting in lieu thereof "$200,000".
Effective July 1, 1976, such section is amended by striking out "or such establishment has an annual dollar volume of sales which is less than $200,000 (exclusive of excise taxes at the retail level which are separately stated)".

ployer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis on the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order or certificate of the Secretary issued under section 14; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

[(9) any employee employed by an establishment which is a motion picture theater; or]

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

[(11) any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under clause (2) of this subsection with respect to whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue or such agency does not exceed $500 a month; or]

(12) any employee employed as a seaman on a vessel other than an American vessel; or

[(13) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight; or]

[(14) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and bailing) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco.]

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee

employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary).

(b) The provisions of section 7 shall not apply with respect to—

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or

(2) any employee of an employer *engaged in the operation of a common carrier by rail and* subject to the provisions of part 1 of the Interstate Commerce Act; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or

(4) any employee *who is* employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct [thereof;] *thereof, and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed;* [1] or

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(6) any employee employed as a seaman; or

(7) any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier [, if the rates and services of such railway or carrier are subject to regulation by a State or local agency] *(regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed;* [2] or

(8)(*A*) any employee *(other than an employee of a hotel or motel who is employed to perform maid or custodial services) who is* employed by an establishment which is a hotel, motel, or restaurant *and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed* [; or any employee who (A) is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises, and (B) receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed]; or

---

[1] Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, section 13(b)(4) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours."

Effective two years after such date, section 13(b)(4) is repealed.

[2] Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, such section is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

Effective two years after such date, such section is repealed.

(B) any employee who is employed by a hotel or motel to perform maid or custodial services and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; [1] *or*

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10) (A) Any salesman [, partsman, or mechanic] primarily engaged in selling [or servicing] automobiles, trailers, trucks, farm implements, *boats*, or aircraft if *he is* employed by a nonmanufacturing establishment primarily engaged in the business of selling such *boats or* vehicles to ultimate purchasers; or

(B) any partsman primarily engaged in selling parts for automobiles, trucks, or farm implements and any mechanic primarily engaged in servicing such vehicles, if they are employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; or

(11) any employee employed as a driver or drivers' helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a); or

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a)(1); or

---

[1] Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, subparagraphs (A) and (B) of section 13(b)(8) are each amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-six hours".

Effective two years after such date, subparagraph (B) of section 13(b)(8) is amended by striking out "forty-six hours" and inserting in lieu thereof "forty-four hours".

Effective three years after such date, subparagraph (B) of section 13(b)(8) is repealed and such section is amended by striking out "(A)".

(14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm if no more than five employees are employed in the establishment in such operations; or

(15) any employee engaged in [ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities, or in] the processing of [sugar beets, sugar-beet molasses, sugarcane, or] maple sap into sugar (other than refined sugar) or syrup; or

(16) any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

(17) any driver employed by an employer engaged in the business of operating taxicabs; or

(18) any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs, *and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed*; [1] or

(19) any employee of a bowling establishment if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is [employed] *employed;* [2] *or*

(20) any employee who is employed in domestic service in a household and who resides in such house hold; or

(21) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco; or

(22) any employee or proprietor in a retail or service establishment, which qualifies as an exempt retail or service establishment under paragraph (2) of subsection (a) with respect to whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public

---

[1] Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, such section is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".
Effective two years after such date, such section is repealed.

[2] Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, section 13(b) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".
Effective two years after such date, such section is repealed.

under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month and receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; [3] *or*

(23) any employee who is employed with his spouse by a nonprofit education institution to serve as the parents of children—

(A) who are orphans or one of whose natural parents is deceased, or

(B) who are enrolled in such institution and reside in residential facilities of the institution, while such children are in residence at such institution,

if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(24) any employee who is engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities and who receives compensation for employment in excess of—

(A) seventy-two hours in any workweek for not more than six workweeks in a year,

(B) sixty-four hours in any workweek for not more than four workweeks in that year,

(C) fifty-four hours in any workweek for not more than two workweeks in that year, and

(D) forty-eight hours in any other workweek in that year, at a rate not less than one and one-half times the regular rate at which he is employed; [4] *or*

(25) any employee who is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup and who receives compensation for employment in excess of—

(A) seventy-two hours in any workweek for not more than six workweeks in a year.

(B) sixty-four hours in any workweek for not more than four workweeks in that year,

(C) fifty-four hours in any workweek for not more than two workweeks in that year, and

---

[3] Effective one year after the effective date of the Fair Labor Standards Amendments of 1974, section 13(b)(22) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

Effective two years after such date, section 13(b)(22) is repealed.

[4] Effective January 1, 1975, section 13(b)(24) is amended—

(A) by striking out "seventy-two" and inserting in lieu thereof "sixty-six";
(B) by striking out "sixty-four" and inserting in lieu thereof "sixty";
(C) by striking out "fifty-four" and inserting in lieu thereof "fifty";
(D) by striking out "and" at the end of subparagraph (C);
(E) by striking out "forty-eight hours in any other workweek in that year" and inserting in lieu thereof the following: "forty-six hours in any workweek for not more than two workweeks in that year; and
forty-four hours in any other workweek in that year,".

Effective January 1, 1976, section 13(b)(24) is amended—

(A) by striking out "sixty-six" and inserting in lieu thereof "sixty";
(B) by striking out "sixty" and inserting in lieu thereof "fifty-six";
(C) by striking out "fifty" and inserting in lieu thereof "forty-eight";
(D) by striking out "forty-six" and inserting in lieu thereof "forty-four";
(E) by striking out "forty-four" and inserting in lieu thereof "forty".

(D) forty-eight hours in any other workweek in that year, at a rate not less than one and one-half times the regular rate at which he is employed,[5] *or*

(26) any employee employed by an establishment which is a motion picture theater; or

(27) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, pocessing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight.

(c)(1) Except as provided in paragraph (2), the provisions of section 12 relating to child labor shall not apply [with respect] to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed *if such employee—*

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of section 13(a)(6)(A)) required to be paid at the wage rate prescribed by section 6(a)(5),

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

(2) The provisions of section 12 relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 12 relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(d) The provisions of sections 6, 7, and 12 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens

---

[5] Effective January 1, 1975, section 13(b)(25) is amended —
(A) by striking out "seventy-two" and inserting in lieu thereof "sixty-six";
(B) by striking out "sixty-four" and inserting in lieu thereof "sixty";
(C) by striking out "fifty-four" and inserting in lieu thereof "fifty";
(D) by striking out "and" at the end of subparagraph (C);
(E) by striking out "forty-eight hours in any other workweek in that year" and inserting in lieu thereof the following: "forty-six hours in any workweek for not more than two workweeks in that year; and
"(E) forty-four hours in any other workweek in that year,".
Effective January 1, 1976, section 13(b)(25) is amended—
(A) by striking out "sixty-six" and inserting in lieu thereof "sixty";
(B) by striking out "sixty" and inserting in lieu thereof "fifty-six";
(C) by striking out "fifty" and inserting in lieu thereof forty-eight";
(D) by striking out "forty-six" and inserting in lieu thereof "forty-four";
(E) by striking out "forty-four" and inserting in lieu thereof "forty".

(including the harvesting of the evergreens or other forest products used in making such wreaths).

(e) The provisions of section 7 shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 6(a)(3), except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 7 if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 6(a)(3), that economic conditions warrant such action.

(f) The provisions of sections 6, 7, 11, and 12 shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; Johnston Island; and the Canal Zone.

(g) The exemption from section 6 provided by paragraphs (2) and (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support, the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated), except that the exemption from section 6 provided by subparagraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) if it were in an enterprise described in section 3(s).

(h) The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

(1) is employed by such employer—

(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of

cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; and

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

(2) receiver for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 7.

NOTE.—Section 13(a)(2) is further changed following the effective date of the Fair Labor Standards Amendments of 1974 and repealed thereafter.

(Effective July 1, 1974)

SEC. 13 * * *
(1) * * *

* * * * * * *

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4), if more than 50 percentum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s) or such establishment has an annual dollar volume of sales which is less than [$250,000] *$225,000* (exclusive of excise taxes at the retail level which are separately stated). A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or

(Effeffctive July 1, 1975)

SEC. 13 * * *
(1) * * *

* * * * * * *

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment has an annual dollar volume of sales which is less than [$225,000] *$200,000* (exclusive of excise taxes at the retail level which are separately stated). A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or

(Effective July 1, 1976)

SEC. 13 * * *
(1) * * *

* * * * * * *

(2) any employee employment by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or re-

pairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s) [or such establishment has an annual dollar volume of sales which is less than $200,000 (exclusive of excise taxes at the retail level which are separately stated)]. A "retail or service establishment' 'shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or

NOTE.—Section 13(b)(7) is further changed effective during the second year following the effective date of the Fair Labor Standards Amendments of 1974 and repealed thereafter.

(Effective during the Second year following the effective date)

EXEMPTIONS

SEC. 13. (a) * * *
(b) * * *
(1) * * *
* * * * * * *

(7) any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit), and if such employee receives compensation for employment in excess of [forty-eight] *forty-four* hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(Effective during the Third year following the effective date and thereafter)

EXEMPTIONS

SEC. 13. (a) * * *
(b) * * *
(1) * * *
* * * * * * *

[(7) any driver, operator, or conductor employed by an employer engaged in local trolley or motorbus carrier (regardless of whether or not such railway or the business of operating a street, suburban or interurban electric railway, or carrier is public or private or operated for profit), and if such employee receives compensation for employment in excess of forty-four hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or]

NOTE.—Section 13(b)(18) is further changed effective during the second year following the effective date of the Fair Labor Standards Amendments of 1974 and repealed thereafter.

(Effective during the Second year following the effective date)

EXEMPTIONS

SEC. 13. (a) * * *
(b) * * *
(1) * * *
* * * * * * *

(18) any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs, and receives compensation for employment in excess of [forty-eight] *forty-eight* hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(Effective during the Third year following the effective date and thereafter)

EXEMPTIONS

SEC. 13. (a) * * *
(b) * * *
(1) * * *

* * * * * * *

[(18) any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees or to members or guests of members of clubs, and receives compensation for employment in excess of forty-four hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or]

NOTE.—Section 13(b)(19) is changed effective during the second year following the effective date of the Fair Labor Standards Amendments of 1974 and repealed thereafter.

(Effective during the Third year following the effective date and thereafter)

EXEMPTIONS

SEC. 13. (a) * * *
(b) * * *
(1) * * *

* * * * * * *

(19) any employee of a bowling establishment if such employee receives compensation for employment in excess of [forty-eight] *forty-four* hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(Effective during the Third year following the effective date and thereafter)

EXEMPTIONS

SEC. 13. (a) * * *
(b) * * *
(1) * * *

* * * * * * *

[(19) any employee of a bowling establishment if such employee receives compensation for employment in excess of forty-four hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or]

LEARNERS, APPRENTICES, STUDENTS, AND HANDICAPPED WORKERS

[The Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitation as to prescribe.]

[(b) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment of full-time students, regardless of age but in compliance with applicable child labor laws, on a part-time basis in retail or service establishments (not to exceed twenty hours in any workweek) or on a part-time or a full-time basis in such establishments during school vacations, under special certificates issued pursuant to regulations of the Secretary, at a wage rate not less than

85 per centum of the minimum wage applicable under section 6, except that the proportion of student hours of employment to total hours of employment of all employees in any establishment may not exceed (1) such proportion for the corresponding month of the twelve-month period preceding May 1, 1961, (2) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered by this Act for the first time on or after the effective date of the Fair Labor Standards Amendments of 1966, such proportion for the corresponding month of the twelve-month period immediately prior to such date, or (3) in the case of a retail or service establishment coming into existence after May 1, 1961, or a retail or service establishment for which records of student hours worked are not available, a proportion of student hours of employment to total hours of employment of all employees based on the practice during the twelve-month period preceding May 1, 1961, in (A) similar establishments of the same employer in the same general metropolitan area in which the new establishment is located, (B) similar establishments of the same employer in the same or nearby counties if the new establishment is not in a metropolitan area, or (C) other establishments of the same general character operating in the community or the nearest comparable community. Before the Secretary may issue a certificate under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection.

[(c) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by certificate or order provide for the employment of full-time students, regardless of age but in compliance with applicable child labor laws, on a part-time basis in agriculture (not to exceed twenty hours in any workweek) or on a part-time or a full-time basis in agriculture during school vacations, at a wage rate not less than 85 per centum of the minimum wage applicable under section 6. Before the Secretary may issue a certificate or order under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection.]

SEC. 14. (a) the Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitation as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b) (1) (A) The Secretary, to the extent necessary in order to prevent, curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands

not described in section 5(e), at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), the proportion of student hours of employment under special certificates issued under subparagraph (A) to the total hours of employment of all employees in any retail or service establishment may not exceed (i) such proportion for the corresponding month of the twelve-month period preceding May 1, 1961, (ii) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered by this Act for the first time on or after the effective date of the Fair Labor Standards Amendments of 1966 or the Fair Labor Standards Amendments of 1974, such proportion for the corresponding month of the twelve-month period immediately prior to the applicable effective date, or (iii) in the case of a retail or service establishment coming into existence after May 1, 1961, or a retail or service establishment for which records of student hours worked are not available, a proportion of student hours of employment to total hours of employment of all employees based on the practice during the twelve-month period preceding May 1, 1961, in similar establishments of the same employer in the same general metropoliton area in which the new establishment is located, similar establishments of the same employer in the same or nearby counties if the new establishment is not in a metropolitan area, or other establishments of the same general character operating in the community or the nearest comparable community. For the purpose of the preceding sentence, the term "student hours of employment" means student hours worked at less than $1.00 an hour, except that such term shall include, in States whose minimum wages were at or above $1.00 an hour in the base year, hours worked by students at the State minimum wage in the base year.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 6(a)(5) or not less than $1.30 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section (5)(e), at a wage rate not less than 85 per centum of the wage rate in effect under section (6)(c)(3)), of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(c)), of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe stand-

ards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

(4)(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

(B) If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under a paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed four—

(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

[(d)] (c)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment under special certificates of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, at wages which are lower than the minimum wage applicable under section 6 of this Act but not less than 50 per centum of such wage and which are commensu-

rate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(2) The Secretary, pursuant to such regulations as he shall prescribe and upon certification of the State agency administering or supervising the administration of vocational rehabilitation services, may issue special certificates for the employment of—

(A) handicapped workers engaged in work which is incidental to training or evaluation programs, and

(B) multihandicapped individuals and other individuals whose earning capacity is so severely impaired that they are unable to engage in competitive employment,

at wages which are less than those required by this subsection and which are related to the worker's productivity.

(3) (A) The Secretary may by regulation or order provide for the employment of handicapped clients in work activities centers under special certificates at wages which are less than the minimums applicable under section 6 of this Act or prescribed by paragraph (1) of this subsection and which constitute equitable compensation for such clients in work activities centers.

(B) For purposes of this section, the term "work activities centers" shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

(d) The Secretary may by regulation or order provide that sections 6 and 7 shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws.

PROHIBITED ACTS

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Secretary of Labor issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Secretary issued under section 14;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

(4) to violate any of the provisions of section 12;

(5) to violate any of the provisions of section 11(c) or any regulation or order made or continued in effect under the provisions of section 11(d), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of subsection (a)(1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

PENALTIES

SEC. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained *against any employer (including a public agency)* in any *Federal or State* court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 17 in which restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 6 or section 7 of this Act by an employer liable therefor under the provisions of this subsection.

(c) The Secretary [of Labor] is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensa-

tion owing to any employee or employees under sections 6 or [section] 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. [When a written request is filed by any employee with the Secretary claiming unpaid minimum wages or unpaid overtime compensation under section 6 or section 7 of this Act, the] *The* Secretary may bring an action in any court of competent jurisdiction to recover the amount of [such claim: *Provided*, That this authority to sue shall not be used by the Secretary in any case involving an issue of law which has not been settled finally by the courts, and in any such case no court shall have jurisdiction over such action or proceeding initiated or brought by the Secretary if it does involve any issue of law not so finally settled] *the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages.* [The consent of any employee to the bringing of any such action by the Secretary, unless such action is dismissed wthout prejudice on motion of the Secretary, shall constitute a waiver by such employee of any right of action he may have under subsection (b) of this section for such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages.] *The right provided by subsection (b) to bring an action by or on behalf of any employee and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 6 and 7 or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provision of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary.* Any sums thus recovered by the Secretary on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary under this subsection for the purposes of the statutes of limitations provided in section 6(a) of the Portal-to-Portal Act of 1947, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

(d) In any action or proceeding commenced prior to, on, or after the date of enactment of this subsection, no employer shall be subject to any liability or punishment under this Act or the Portal-to-Portal Act of 1947 on account of his failure to comply with any provision or provisions of such Acts (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 13 (f) is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment

of subsection (d), or (3) with respect to work performed in a possession named in section 6(a)(3) at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, may be—

(1) deducted from any sums owing by the United States to the person charged;

(2) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(3) ordered by the court, in an action brought under section 15(a)(4), to be paid to the Secretary.

Any administrative determination by the Secretary of the amount of such penalty shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary. Sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provisions of section 2 of an Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes" (29 U.S.C. 9a).

INJUNCTION PROCEEDINGS

SEC. 17. The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 15, including in the case of violations of section 15(a)(2) the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this Act (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 6 of the Portal-to-Portal Act of 1947).

RELATION TO OTHER LAWS

SEC. 18. (a) No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision

of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provisions of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employed in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

(b) Notwithstanding any other provision of this Act (other than section 13(f) or any other law—

(1) any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(c)(7) of title 5, United States Code, or

(2) any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

shall have the basic compensation fixed or adjusted at a wage rate which is not less than the appropriate wage rate provided for in section 6(a)(1) of this Act (except that the wage rate provided for in section 6(b) shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and shall have his overtime compensation set at an hourly rate not less than the overtime rate provided for in section (a) (1) of this Act.

SEPARABILITY OF PROVISIONS

SEC. 19. If any provision of this Act or the application of such provision to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

OTHER LAWS AMENDED

Section 11 of the Age Discrimination in Employment Act of 1967

DEFINITIONS

SEC. 11. For the purposes of this Act—

(a) * * *

(b) The term "employer" means a person engaged in an industry affecting commerce who has [twenty-five] *twenty* or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: *Provided*, That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. [The term also means any agent of such a person, but such term does not include the United States, a corporation wholly owned by the Government of the United States, or a State or political subdivision thereof.] *The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United States, or a corporation wholly owned by the Government of the United States.*

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of the United States [, or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance].

* * * * * * *

(f) The term "employee' means an individual employed by any [employer.] *employer except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision.*

Section 14 of the Age Discrimination in Employment Act of 1967

FEDERAL-STATE RELATIONSHIP

SEC. 14. (a) Nothing in this Act shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this Act such action shall supersede any State action.

(b) In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 7 of this Act before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 15. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies as defined in section 105 of title 5, United States Code (including employees and

applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units in the government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on age.

(b) Except as otherwise provided in this subsection, the Civil Service Commission is authorized to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Civil Service Commission shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

(1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit;

(2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and

(3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Civil Service Commission which shall include a provision that an employee or applicant for employment shall be notified on any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Any persons aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act.

(d) When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

(e) Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law.

Section [15] *16* of the Age Discrimination in Employment Act of 1967

EFFECTIVE DATE

SEC. [15] *16*. This Act shall become effective one hundred and eighty days after enactment, except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act up to an additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and (b) that on or after the date of enactment the Secretary of Labor is authorized to issue such rules and regulations as may be necessary to carry out its provisions.

Section [16] *17* of the Age Discrimination Employment Act of 1967

APPROPRIATIONS

SEC. [16] *17*. There are hereby authorized to be appropriated such sums, not in excess of [$3,000,000] *$5,000,000* for any fiscal year, as may be necessary to carry out this Act.

PERTINENT PROVISIONS AFFECTING THE FAIR LABOR STANDARDS ACT FROM THE PORTAL-TO-PORTAL ACT OF 1947

(61 Stat. 84)

[PUBLIC LAW 49—80TH CONGRESS]

[CHAPTER 52—1ST SESSION]

[H.R. 2157]

AN ACT, To relieve employers from certain liabilities and punishments under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PART IV

MISCELLANEOUS

* * * * * * *

SEC. 6. STATUTE OF LIMITATIONS.—Any action commenced on or after the date of the enactment of this Act to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—

(a) if the cause of action accrues on or after the date of the enactment of this Act—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a will-

ful violation may be commenced within three years after the cause of action accrued;

* * * * * * *

(d) with respect to any cause of action brought under section 16(b) of the Fair Labor Standards Act of 1938 against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1974, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendment of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on grounds other than State immunity from Federal jurisdiction.

* * * * * * *

SEC. 11. LIQUIDATED DAMAGES.—In any action commenced prior to or on or after the date of the enactment of this Act to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 16[(b)] of such Act.

* * * * * * *

MINORITY VIEWS OF MESSRS. TAFT, DOMINICK AND BEALL

Amendments to the Fair Labor Standards Act have not been enacted since 1966, and we recognize a need for a constructive increase in the minimum wage. In the interim, the debate surrounding minimum wage legislation has centered around four issues: wage rates, extensions of coverage, repeal of exemptions and a differential wage structure for youth. Unfortunately, after three years of Congressional consideration, no constructive amendments to the Act have become law. The bill reported out by the Committee is essentially identical to the bill vetoed by the President in the summer of 1973, and the reasons for rejecting the bill last Session are equally as compelling in certain areas for S. 2747.

The Committee heard no witnesses and had before it little or no current data upon which to assess the effects on the economy of the actions it took, especially with regard to exemptions and extensions of coverage. The failure of the Committee to include new initiatives to reduce youth unemployment is also extremely disappointing.

In our Minority Views to last year's vetoed bill, S. 1861, we stated in detail our reasons for rejecting the Committee's approach, and we would reiterate some of them briefly here.

First, we believe the *coup de grace* approach that the Committee has taken with respect to existing exemptions is unwarranted. The potential adverse economic effect resulting from repeal or modification of these exemptions to certain segments of the economy, especially small businesses, is significant and in certain cases the Committee's action may mean economic fatality for many small businesses in the country and many thousands of their employees. For example, S. 2747 would repeal or severely modify current exemptions in the Fair Labor Standards Act for the following areas and occupational categories: retail and service establishments grossing less than $250,000 annually (complete repeal of minimum wage and overtime exemption); tobacco employees; nursing home employees; hotel, motel and restaurant employees; salesmen, partsmen and mechanics; food service establishment employees; seasonal industry employees; cotton ginning and sugar processing employees; and, local transport employees.

At the very least, action should not be taken in these areas until sufficient facts are before the Committee to permit each exemption to be considered on its own merit.

Second, S. 2747 is deficient with regard to new initiatives to increase employment opportunities for youth. As an example of this acute problem, the national unemployment rate as of January, 1974, for Caucasians 16 and 17 years of age was 16.8% and for non-Caucasians 16 and 17 years of age, the rate was a towering 38.9%. These statistics underscore the need for implementation of a national program of specialized wage structures for youth similar to proposals we have

advocated during prior consideration on this issue. Such a national initiative would constructively supplement the broad authority the Secretary of Labor currently has available under Section 14 of the Act with regard to adoption of special wage structures for youth employment and training.

Domestic service employees would be covered for the first time under the bill as reported by the Committee with a wage scale for such employees the same as that established for those who have been under coverage for some time. While we share the concern the Committee has expressed for the economic advancement for individuals in this occupational category, we believe such an extension of coverage under the Act will further complicate tax and reporting problems and create further unemployment. Certainly a more practical approach than covering all such employees who earn more than $50 in a calendar quarter (Committee incorporation of Section 209(g) of the Social Security Act) can be found to reflect the Committee's concern in this area.

We believe Congress should expeditiously enact constructive increases in the minimum wage to help compensate for the eroded purchasing power of our lowest paid workers. The longer a minimum wage increase is postponed, the greater the pressure will be for excessive increases over too short a period of time, thus maximizing the inflationary and disemployment effects on the economy. To continue to hold a wage rate increase hostage to unrelated political issues only penalizes our Nation's lowest paid workers. Therefore, we are hopeful the Senate will adopt constructive changes in the Committee bill to permit amendments to the Fair Labor Standards Act to become a reality during this Session of Congress.

ROBERT TAFT, JR.
PETER DOMINICK.
J. GLENN BEALL, JR.

○